

CARVER ORGANIZATIONAL SUPPORT 2015

October 1, 2014 - September 30, 2015

Revenues**Internal Order 28000000005**

4502220	Contr Priv Restrict	51,000
6101100	Interfund Transfers In - Hotel/Motel Tax	327,627
6101100	Interfund Transfers In Trust Fund	93,975

Total Revenues**472,602****Appropriations****Organizational Support 2015**

5101010	Regular Salaries	289,087
5101020	Overtime Salaries	0
5101040	Shift Differential	0
5101050	Language Skill Pay	600
5101090	Holiday Hourly Sal	0
5103005	FICA & Medicare Expense	21,006
5103010	Life Insurance	258
5103035	Personal Leave Buy Back	0
5104030	Flex Benefits Contr	45,346
5105010	Retirement Exp	27,221
5181035	Pay Plan	900
5201040	Fees to Prof Contr.	51,000
5203090	Transportation Fees	0
5501000	Cap<5000 - Comp Equ.	4,000
5501065	Cap<5000 - Furn & Fix	2,808
5709080	M&E Auto (Budget Only)	30,376

GRANT EXP**472,602**

CARVER CULTURAL CENTER
 ORGANIZATIONAL SUPPORT 2015
 October 1, 2014 - September 30, 2015
 Personnel Complement

Organizational Support 2015

Positions	Current		Revised
	No. of Positions	Add/Delete	No. of Positions
80-0040-ADMINISTRATIVE ASSISTANT I	1	0	1
80-0041-ADMINISTRATIVE ASSISTANT II	1	0	1
80-0078-BOOKING & SERVICES COORDINATOR	1	0	1
80-0655-AUDIO/VIDEO PRODUCTION COORDINATOR	1	0	1
80-0844-GRANTS MANAGEMENT OFFICER	1	0	1
80-2092-EDUCATION COORDINATOR	1	0	1
80-0077-EVENT SVCS COORDINATOR (part-time)	1	0	1
Organizational Support 2015	7	0	7

Confirmation of Fiscal Year 2015 Funding Agreement (Avenida Guadalupe Association)

This Agreement is entered into between Landlord and Tenant as of the later of the two signatures at the end.

1. Identifying Information.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: PO Box 839966, San Antonio, Texas 78283-3966 (Attention: Leasing Manager, EastPoint and Real Estate Services)

Tenant: Avenida Guadalupe Association

Tenant's Address: 1314 Guadalupe Street, Suite 201, San Antonio, Texas 78207

Lease: Lease of office, retail, and residential buildings on the North and South sides of Guadalupe Avenue and the South side of El Paso Avenue, West of Brazos and East of San Jacinto.

Ordinance Authorizing Lease: 2009-09-10-0712

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease. References to "Lease" in this amendment include both the original Lease and all previous amendments to it.

3. Funding for Fiscal 2015.

Pursuant to City Council action on September 18, 2014, the City of San Antonio Budget was approved for the Fiscal Year ending September 30, 2015 that provided funding in the amount of \$142,000.00 (FY 15 Funding) to be distributed to the Tenant in accordance with Paragraph 27, Tenant Funding by Landlord, of the Lease. Tenant agrees that any request for receipt of the FY 15 Funding will be in accordance with the terms and conditions of the Lease. Tenant further agrees that the FY 15 Funding is being provided with no obligation upon the City to provide funding in future years, and any decision to provide funding for future fiscal years shall be completely at the discretion of the City Council.

3. No Default.

Neither Landlord nor Tenant is in default under the Lease and neither party is aware of a cause of action against the other arising out of or relating to the period before the date of Landlord's signature on this amendment.

4. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City of San Antonio, a Texas municipal corporation

Avenida Guadalupe Association, a Texas nonprofit corporation

Signature: _____

Signature: 

Printed Name: _____

Printed Name: J. Oscar Ramirez

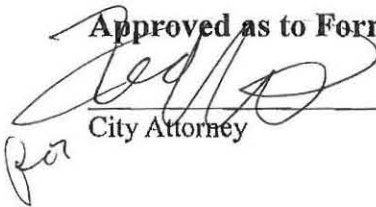
Title: _____

Title: Pres/CEO

Date: _____

Date: 9-8-2014

Approved as to Form:



City Attorney

STATE OF TEXAS	§	AGREEMENT TO USE ECONOMIC
	§	DEVELOPMENT PROGRAM FUNDS
COUNTY OF BEXAR	§	OF THE CITY OF SAN ANTONIO

This Agreement to Use Economic Development Program Funds of the City of San Antonio (the "Agreement") is entered into by and between BIOMED SA, (hereinafter referred to as "GRANTEE"), a not-for-profit corporation which is a tax-exempt organization as described in Section 501(c)(6) of the Internal Revenue Code, and the CITY OF SAN ANTONIO, a home-rule municipality, situated within Bexar County, Texas (hereinafter called "CITY"), acting by and through its City Manager or designee, pursuant to Ordinance No. 2014-09-18-_____ passed and approved on September 18, 2014 (collectively, the "Parties") and pursuant to Article III, Section 52(a), of the Texas Constitution and Chapter 380.002 of the Texas Local Government Code.

RECITALS

WHEREAS, the healthcare and bioscience industry is among the largest industries in San Antonio and industry analysts have forecast substantial economic returns from medical and biotechnological innovations; and

WHEREAS, in recognition of the economic opportunities afforded by the industry, the Economic Development Council of the Greater San Antonio Chamber of Commerce established BIOMED SA ("GRANTEE") to facilitate the industry's growth in the region and to heighten awareness in the industry of the unique assets present within San Antonio; and

WHEREAS, GRANTEE, by accomplishing the aforementioned goals, reduces the burdens of CITY by undertaking such activities that would otherwise be undertaken by CITY; and

WHEREAS, GRANTEE has requested that the City contribute \$100,000 to the organization and has made similar requests to Bexar County, CPS Energy, and private entities for its continued operation; and

WHEREAS, CITY created an Economic Development Program, which includes the granting and loaning of public funds, as authorized under Texas Local Government Code §380.001 for the public purposes of developing and diversifying the economy, increasing employment and expanding commerce and has determined that the efforts of GRANTEE significantly accomplish such a public purpose; **NOW THEREFORE**, the Parties agree as follows:

ARTICLE I. PURPOSE

1.01 The purpose of this Agreement is to establish the terms and conditions of a transfer and grant of public money from CITY to GRANTEE to be used to lessen the burdens of the CITY by assuming in part its obligations to develop and diversify the San Antonio regional economy and the Texas economy, through the operations of GRANTEE.

1.02 GRANTEE understands and agrees that this Agreement is subject to mutual termination in compliance with Article XVIII of this Agreement.

1.03 GRANTEE understands and agrees that the goals and performance measures in this Agreement may be revised and updated by and at the discretion of the Director of the Economic Development Department of the City of San Antonio (“EDD Director”) to further the intent of this Agreement. Therefore, GRANTEE agrees that, at such time as any revisions are so made during the Term hereof, this Agreement will be amended to include such revisions. In the event GRANTEE does not agree to any changes, GRANTEE shall have the option of terminating this Agreement by giving thirty (30) days written notice to CITY in compliance with Article XVIII *Termination* of this Agreement. GRANTEE shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.

1.04 GRANTEE understands and agrees that this Agreement is subject to a general reduction in funding by the City Council of CITY. Should CITY implement a reduction in General Fund expenditures, then agreements funded by CITY's General Fund, including this Agreement may, at CITY's option, be reduced in a like manner. CITY will attempt to provide GRANTEE with as much advance notice of a potential funding reduction as is possible to allow GRANTEE to make budget adjustments.

1.05 In no event shall CITY be liable for any expense of GRANTEE not eligible or allowable hereunder. CITY, in its sole discretion, will determine the eligibility of expenditures.

1.06 GRANTEE covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that GRANTEE shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and GRANTEE, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and GRANTEE. 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 GRANTEE under this Agreement and that the GRANTEE has no authority to bind the City.

ARTICLE II. TERM, AUTHORITY, LITIGATION AND ACCOUNT

2.01 The Term of this Agreement shall be for one year, performable upon execution of the Agreement, effective October 1, 2014 through September 30, 2015

2.02 The City Manager designates the EDD Director or his designee of CITY as administrator of this Agreement. The City Manager may designate a new administrative entity by giving GRANTEE notice thereof, pursuant to Article XIX. GRANTEE shall report directly to the EDD Director or his designee. Director shall modify the goals and performance measures of this Agreement as necessary to further the intent of the Agreement.

2.03 Pursuant to Ordinance No. 2014-09-18-_____, passed and approved on September 18, 2014, CITY agrees to transfer, in accordance with the terms and conditions of this Agreement, a cumulative total of ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000.00) to GRANTEE throughout the Term of this Agreement. These funds shall be deposited in an account separate from all other GRANTEE funds and shall not be commingled with any other account of GRANTEE. Together with any and all interest earned subsequent to these deposits and/or investment income and/or any other source of revenue from these funds, the funds, for the purposes of this Agreement, shall be known as the “GRANT”. The GRANT shall be used by GRANTEE only for the funding and partial funding of GRANTEE’s operating expenses, including salaries.

2.04 Under no circumstances will the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. Furthermore, GRANTEE must obtain the written approval of the City Attorney’s Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.

2.05 During the Term of this AGREEMENT, if GRANTEE files and/or pursues an adversarial proceeding against the CITY then, at the CITY’s option, this AGREEMENT and all access to the funding provided for hereunder may terminate. GRANTEE, at the CITY’s option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.

2.06 For purposes of this Article, “adversarial proceedings” include any cause of action filed by the GRANTEE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

ARTICLE III. CONSIDERATION AND SCOPE OF SERVICES

3.01 GRANTEE shall utilize up to one hundred thousand dollars and no cents (\$100,000.00) for the funding or partial funding of GRANTEE’s operating expenses, including salaries. These funds shall be advanced and distributed to GRANTEE in two separate amounts, the first in the amount of up to fifty thousand dollars and no cents (\$50,000.00) to be distributed soon after the effective date of a duly-passed Ordinance by the City Council of the City of San Antonio authorizing the execution of this Agreement, and following the execution of this Agreement. The second distribution of up to fifty thousand dollars and no cents (\$50,000.00) shall be made and conditioned upon verification, through financial reports from GRANTEE, of matching funds from public or private sources other than CITY. In consideration of funds received, the GRANTEE must fulfill the following requirements:

- A. GRANTEE shall provide CITY’s EDD Director with proper documentation verifying receipt of Fiscal Year 2015 funding commitments from sources other than CITY.
- B. GRANTEE shall provide quarterly updates on its activities to the CITY’s EDD Director and, upon request, to the City Council of CITY, its boards, committees and/or commissions.

- C. GRANTEE shall provide CITY's EDD Director with semi-annual budget reports outlining cumulative contributions and expenditures (to include all sources of funding).
- D. GRANTEE shall submit all required and requested documents to CITY's EDD Director for proper review of GRANTEE's expenditures and activities associated with this Agreement.
- E. GRANTEE shall include recognition of the CITY's contribution to GRANTEE in all of GRANTEE's promotional materials, products and publications.
- F. GRANTEE shall provide CITY's EDD Director with all marketing materials and literature showing evidence that the CITY's contribution to GRANTEE is recognized in compliance with the provisions of this Agreement.

3.02 GRANTEE shall collaborate with the City, San Antonio Economic Development Foundation (SAEDF) and other community economic development partners in focusing on the achievement of the following goals during the Term of this Agreement:

- A. GRANTEE shall serve as a 'sector expert' resource for local economic developers (including the CITY's Economic Development Department) in developing strategies to sustain and grow San Antonio's biomedical industry.
- B. GRANTEE shall work with local industry leaders to identify San Antonio's competitive strengths and organize industry leadership to identify and execute key strategic activities toward the advancement of these strengths.
- C. GRANTEE shall coordinate with SA2020 toward progress in meeting the SA2020 Vision Goals in the cause area of Economic Competitiveness.
- D. GRANTEE shall work with the SAEDF toward implementation of the Forward San Antonio Strategic Plan.
- E. GRANTEE shall assist in helping to secure biomedical and healthcare industry prospects, jobs and investment to locate, expand or initiate start-up operations in San Antonio as described below in *Table 1: Economic Development Metrics*. "Prospects" are defined as companies which have a current site selection process underway, have San Antonio on a list of sites to consider and have the means (the resources/funding) to carry a proposed project to conclusion.

Table 1. Economic Development Metrics

BioMed SA Action Plan, FY 2015 Goals	
New Qualified Prospects	3
Recruitment/Expansion	2
New Jobs Created	15
BioMed Conference / Marketing Event	1
International Trade & Investment Missions	1

- F. GRANTEE shall work in conjunction with partners such as The Texas Technology Development Center (T3DC) and the San Antonio Economic Development Corporation (SAEDC) toward the cultivation of public/private funds focused on catalytic growth capital in support of San Antonio's innovation ecosystem.
 - G. GRANTEE shall use its annual Palmaz Award to raise the visibility of local biomedical innovators and bring national innovators to San Antonio to engage with the community's biomedical sector.
 - H. GRANTEE shall develop advertising and marketing campaigns to promote San Antonio's biomedical industry and shall participate in strategy development with regard to the "Culture of Business" campaign in coordination with the SAEDF.
 - I. GRANTEE shall support recruitment strategies and tools to attract world-class scientists, physicians and research teams to San Antonio.
 - J. GRANTEE shall use its relationships with local biomedical firms to organize company visits for the economic development community's business retention and expansion team and facilitate dialogue about business challenges and opportunities.
 - K. GRANTEE shall work with the Convention and Visitor's Bureau and tourism industry to attract new biomedical and healthcare industry conventions to San Antonio and expose attendees to the CITY's biomedical industry while they are here.
 - L. GRANTEE shall work with CITY's International Relations Office and Free Trade Alliance to identify opportunities for foreign biomedical companies to locate in San Antonio or to do business with local biomedical organizations.
 - M. GRANTEE shall work with community partners to help guide industry efforts to create a pipeline of skilled workers for San Antonio's biomedical industry and encourage efforts to expand bioscience educational opportunities.
- 3.03 GRANTEE's effort and success, as determined solely by CITY's EDD Director, in accomplishing the goals stated above may determine future funding commitments by CITY to GRANTEE.

ARTICLE IV. COMPLIANCE

- 4.01 CITY's ECONOMIC DEVELOPMENT DEPARTMENT is assigned monitoring responsibility for this Agreement.
- A. GRANTEE shall provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of GRANTEE's books, records and files concerning the objectives covered by this Agreement.

- B. An accounting system using generally-accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory. GRANTEE understands that CITY may require any and all books, records and files of GRANTEE necessary to ensure GRANTEE's compliance and use of generally-accepted governmental accounting principles.
 - C. All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date of this Agreement. However, if during the course of this three-year period, an audit or investigation of the GRANTEE begins, then GRANTEE is required to maintain said records until such time as the audit or investigation is completely finished, plus three (3) years thereafter.
 - D. GRANTEE agrees that during the Term of this Agreement, any duly-authorized representative of CITY's ECONOMIC DEVELOPMENT DEPARTMENT shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this Agreement.
 - E. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, GRANTEE shall immediately refund such amount to CITY. GRANTEE further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CITY's ECONOMIC DEVELOPMENT DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.
 - F. The submission of falsified information or the failure to timely submit all information by GRANTEE as requested by CITY is grounds for termination of this Agreement.
 - G. GRANTEE agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute toward, coordinate with, or facilitate the performance of this Agreement.
 - H. GRANTEE shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, and obstruction of investigation or other criminal action, and to prevent frauds and abuse of funds.
- 4.02. GRANTEE agrees to establish internal procedures that ensure employees funded or partially-funded by this Agreement have an established complaint and grievance policy.
- A. Such grievance policy shall include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.

- B. In the event no complaint and grievance policy has been established, GRANTEE shall follow the procedures outlined in the City of San Antonio Municipal Civil Service rules for employees funded or partially-funded by this Agreement.

4.03 GRANTEE agrees to comply with, and require compliance by any and all contractors and professional consultants performing work in connection with any procurement of product, infrastructure or service that will be paid for out of the GRANT, all federal, state and local laws, rules and regulations including, but not limited to, the Fair Labor Standards Act, the Equal Pay Act and the Equal Employment Opportunity Act, all as amended and as applicable.

4.04 GRANTEE understands and agrees that GRANTEE is required to refund money, pursuant to 80(R) HB 1196, that GRANTEE has received from CITY through this Agreement, in the event of GRANTEE's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

4.05 Insofar as practical, in carrying out the terms of this Agreement, GRANTEE shall use a good faith effort to use the employment and training programs of CITY.

4.06 GRANTEE will complete and submit CITY's Ethic's Disclosure Form prior to GRANTEE'S receipt of any GRANT funds.

4.07 GRANTEE agrees that CITY may carry out monitoring and evaluation of activities to ensure GRANTEE'S compliance with this Agreement.

ARTICLE V. RECORDS, REPORTS AND AUDIT RIGHTS

5.01 GRANTEE shall maintain, in its San Antonio offices, all books and financial records in accordance with generally-accepted accounting principles for governmental entities and as may be reasonably prescribed by CITY's Chief Financial Officer, which reflect all expenditures made from the GRANT, including work by subcontractors. Such books and financial records, together with any other documentation necessary for verification of GRANTEE'S compliance with the terms of this Agreement, shall be made available to CITY on request through the EDD Director or the City Auditor or their representatives. CITY shall have the authority to audit, examine and make excerpts or transcripts from said books, records and documentation regarding all expenditures related to this Agreement. GRANTEE'S record system shall contain sufficient documentation to provide full support and justification for each expenditure made from GRANT funds. CITY's Auditor or his designee may review and approve GRANTEE'S system of internal accounting and administrative controls at any time during the Term of this Agreement to assure compliance by GRANTEE.

5.02 GRANTEE shall submit to CITY's EDD Director, on a **semi-annual** basis, the Consolidated Balance Sheet, Statement of Support and Revenue, Statement of Changes in Financial Position of the GRANTEE and a line item Summary of Expenditures paid from GRANT funds. These reports shall be prepared by the 30th of the month following the end of

the reporting quarter. Additionally, GRANTEE agrees to allow CITY to review all books and financial reports of GRANTEE pertaining to the GRANT funds on an **annual** basis.

5.03 GRANTEE shall submit to CITY's EDD Director and CITY Auditor, on an **annual** basis, a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards for governmental entities within one hundred and twenty (120) days of GRANTEE'S fiscal year end. The audited financial statement shall include a detailed schedule of receipts and expenditures of GRANT funds by budgeted cost category. It is imperative any auditor performing an audit of GRANTEE read the entire Agreement, including all attachments, if any, between the CITY and GRANTEE, since the budget and financial compliance of the Agreement is only a portion of the total contractual obligation. GRANTEE shall submit the audited financial statements and any management letter prepared by the independent CPA to both the Department of Economic Development, P.O. Box 839966, San Antonio, Texas 78238-3966, and to the Office of the City Auditor, 111 Soledad, Suite 600, San Antonio, Texas, 78205.

5.04 During the Term of this Agreement, GRANTEE shall cause to be delivered to CITY's EDD Director copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. GRANTEE understands and agrees that CITY shall have a representative on the Board of Directors and the Executive Council, as outlined in its Bylaws.

5.05 GRANTEE understands that because the GRANT is of public money, information pertaining to the receipt and expenditure of said funds are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

ARTICLE VI. INSURANCE

6.01 GRANTEE agrees that upon entering a contract for professional services or infrastructure or capital improvement construction, if any, to be paid for out of the GRANT, GRANTEE, in accordance with this Agreement, shall cause its contractors or subcontractors to provide proof of insurance issued by a company admitted to do business in the State of Texas, and rated VII (A-) or better by A.M. Best Co., in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Commercial General Liability - to include coverage for the following where the general exposure exists: <ul style="list-style-type: none"> (a) Premises/Operations (b) Independent Contractors (c) Products/Completed Operations (d) Broad Form Property Damage including Fire Legal Liability (e) Contractual Liability 	Bodily Injury and Property Damage: <u>\$1,000,000</u> , per occurrence; \$2,000,000 aggregate or its equivalent in Umbrella or Excess Liability coverage

- | | |
|---|---|
| 2. Business Automobile Liability Insurance - to include coverage for: | Combined Single Limit for Bodily Injury and Property Damage: <u>\$1,000,000</u> |
| (a) Owned/Leased Automobiles | |
| (b) Non-Owned Automobiles | |
| (c) Hired Automobiles | |
| 3. Builders Risk* | Amount of Contract |
| 4. Commercial Crime
*Where Applicable | Amount of Contract |

6.02 GRANTEE agrees that contractor(s) shall not commence any work under its (their) contract(s) until all insurance certificates have been provided to and approved by CITY. Neither GRANTEE, the contractor nor any agent thereof, shall commence any work until all insurance required of the contractor(s) has been obtained, reviewed and approved by CITY. Approval by CITY shall not relieve or decrease the liability of the contractor(s).

6.03 Premiums chargeable for such insurance may come from GRANT funds, and the insurance shall remain in force during the term of the contract, or any extension thereof.

6.04 GRANTEE further agrees that with respect to the above-required insurance, CITY shall:

- A. be provided with a Waiver of Subrogation, but only as it pertains to Workers' Compensation and Employer's Liability;
- B. be provided with thirty (30) days advance notice in writing of non-renewal, cancellation or material change; and
- C. be provided with a Certificate of Insurance(s), evidencing the above-required insurance, prior to the commencement of any work. Said Certificates of Insurance(s) and all notices required herein shall be provided to:
 - 1) Director, Economic Development Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.
 - 2) Risk Management, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

Copies of insurance policies shall be kept in GRANTEE'S office and shall be made available for inspection by CITY.

ARTICLE VII. CONSTRUCTION PROVISIONS

It is not anticipated that construction or infrastructure activities will be undertaken. However, to the extent that they are, the following provisions shall apply:

7.01 If infrastructure changes or other construction is to be undertaken with GRANT money, then GRANTEE, or its contractors and subcontractors shall provide payment, performance and subdivision bonds, or such other similar cash equivalent or letter of credit, provided same is approved by the City Attorney and the Chief Financial Officer, that names CITY as Obligee and shall submit proof of same to CITY, before any GRANT-funded infrastructure work commences.

7.02 By subsequent written agreement, GRANTEE, by Board resolution, and CITY, after approval by the City's Director of Public Works and the City Attorney, may agree to hold one or more federally-insured certificates of deposit or U.S. Treasury securities to guarantee subdivision work. Without further approval or authorization of the City Council, the City Manager of CITY is hereby authorized to execute any such agreement, and CITY and the City Planning Commission may accept such agreement in lieu of the subdivision performance bond normally required. Provided, however, that any agreement reached pursuant to this section must be attached to this Agreement as a separate appendix, and shall be included as part of the official, public records of the City Clerk. Provided further, that any such agreement shall be valid only if CITY retains the securities set aside in lieu of the subdivision bond. In case of default by GRANTEE on subdivision work, it is also provided that first use of the set-aside funds and interest/investment earnings shall be for performance of the subdivision work by CITY in any legal manner as CITY may choose.

7.03 Compliance with the Davis-Bacon and the Copeland Anti-Kickback Acts shall be required, when and if GRANT funds are spent on infrastructure work, as if this infrastructure work were financed in whole or part by loans or grants from the United States.

7.04 GRANTEE shall promptly pay when due all taxes, license fees, permit fees, debts and obligations incurred by GRANTEE in connection with infrastructure activities or capital improvement activities, if any, to the extent that such taxes and fees are not waived by applicable governmental entities or agencies. GRANTEE shall be responsible for its contractors and subcontractors with regard to securing any fees and paying any taxes, debts or obligations incurred by said contractor or subcontractor.

7.05 If infrastructure projects are to be constructed, GRANTEE shall submit all designs including all drawings, plans, specifications and estimated costs for infrastructure development or capital improvements to be paid from GRANT funds before procuring construction of same. CITY'S approval may be withheld if the proposed infrastructure or capital improvement design and construction fail to comply with applicable codes, standards and specifications.

ARTICLE VIII. INDEMNIFICATION

8.01 **GRANTEE 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 and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY**

directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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 GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.02 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. GRANTEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

8.03 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by GRANTEE in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. GRANTEE 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 GRANTEE fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and GRANTEE 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.

8.04 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of GRANTEE, any subcontractor, anyone directly or indirectly employed by any of them or for anyone 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 GRANTEE or any subcontractor under worker's compensation or other employee benefit legislation.

ARTICLE IX. PUBLIC ACKNOWLEDGEMENT AND POLITICAL ACTIVITIES

9.01 Public acknowledgement of CITY's contribution must be made when funds of CITY are utilized and in all cases when GRANTEE chooses to acknowledge other entities for contributions. Such acknowledgement may include CITY's recognized seal or other appropriate language. No reference to any individual shall be used.

9.02 No funds provided from or through CITY shall be contributed to or used for, in whole or in part, the conduct of political activities or the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of any CITY-funded grant or activity be assigned to work for or on behalf of any partisan or non-partisan political activity or candidate. This Section 9.02, including (A)(1 through 4) and (B)(1 through 3), shall be included in any contract or subcontract of GRANTEE:

A. The following is prohibited:

- 1) Working, or directing other staff to work, on any political activities on paid time.
- 2) The use of facilities or equipment, paid for in whole or in part with CITY funds, for political purposes. This includes space, office equipment and supplies, and telephones during agency time as well as after regular-duty hours.
- 3) The implicit or explicit coercion of staff to work on political activities on their own time.
- 4) The above statements shall not be construed to prohibit any person from exercising his rights as a citizen to express his opinion and to cast his vote.

B. In order to ensure compliance with Section 9.02 above, GRANTEE shall:

- 1) Provide every staff person with a statement of the above prohibition.
- 2) Include on that statement a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the abovementioned policy in Section 9.02 of this Agreement, to write or call and report the same to the Director of the Economic Development Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas, 78283; 210-207-8080.
- 3) Have each employee sign the statement and include the same in GRANTEE's personnel files, as appropriate, with copies to CITY.

ARTICLE X. CONFLICT OF INTEREST

10.01 GRANTEE 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 Section 2-52 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 CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his 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.

10.02 Pursuant to Section 10.01 above, GRANTEE 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. GRANTEE further warrants and certifies that it has tendered to the CITY a Contracts Disclosure Form in compliance with the CITY's Ethics Code.

ARTICLE XI. NEPOTISM

11.01 GRANTEE agrees that it shall not award a contract of any nature, which is to be paid for from this GRANT, to any person who is related to a member of GRANTEE'S Board of Directors or staff.

ARTICLE XII. DEFAULT AND RECAPTURE

12.01 If GRANTEE fails or refuses to comply, or fails or refuses to require contractor or subcontractor compliance with the material provisions of this Agreement and/or if at any time CITY learns that a contractor or subcontractor is willfully violating or refusing to observe the material conditions, provisions or stipulations of this Agreement, CITY through its City Manager or her designee may, if such noncompliance continues for thirty (30) days after receipt of written notice, terminate this Agreement and require reimbursement of all GRANT funds. All costs and expenses of finishing applicable projects shall then be the sole responsibility of GRANTEE.

12.02 If GRANTEE fails to comply with the material terms of any other contract or agreement to which CITY is a party, although unrelated to this Agreement, CITY through its City Manager or her designee may, by written notice, direct GRANTEE to comply with the terms of said Agreement. If noncompliance continues beyond thirty (30) days from such notice, the City Manager or designee may, in addition to seeking remedies at law and in equity, require reimbursement of all then-unexpended GRANT funds.

12.03 In the event of termination due to material default by GRANTEE, GRANTEE shall return to CITY, within sixty (60) calendar days of receiving CITY'S written notice of termination, all funds received from CITY under this Agreement.

ARTICLE XIII. ASSIGNMENT

13.01 THIS AGREEMENT IS PERSONAL TO GRANTEE AND FUNDS RECEIVED AS A RESULT HEREOF SHALL ONLY BE USED BY GRANTEE FOR THE PURPOSES STATED HEREIN. GRANTEE SHALL NOT ASSIGN THIS AGREEMENT NOR SUBCONTRACT ANY OR ALL OF THE RIGHTS AND DUTIES HEREUNDER.

13.02 If for any reason GRANTEE loses its tax-exempt status and is no longer a tax-exempt non-profit entity as described in Section 501(c)(6) of the Internal Revenue Code, all assets procured by the GRANT may be transferred, upon the written consent of City, to another qualifying corporation upon City Council approval.

ARTICLE XIV. GOVERNING LAW AND VENUE

14.01 This Agreement shall be performable in Bexar County, Texas and is governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

ARTICLE XV. LEGAL CONSTRUCTION

15.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XVI. WAIVER

16.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall 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.

16.02 Notwithstanding the above, GRANTEE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.

16.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.

ARTICLE XVII. RELATIONSHIP OF PARTIES

17.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

ARTICLE XVIII. TERMINATION

18.01 The obligations of GRANTEE hereunder shall cease and terminate after audited financial reports document the expenditure of all GRANT funds, except that the obligations of GRANTEE under Article V hereof shall cease and terminate one (1) year after the disbursement of all GRANT funds.

18.02 Either Party shall have the option of terminating this Agreement by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either Party exercises the option of terminating this

Agreement, then any and all unused funds either allocated and in possession of GRANTEE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to GRANTEE under the terms of this Agreement; or (2) retain any and all funds allocated but not distributed to GRANTEE.

ARTICLE XIX. NOTICES

19.01 Any notice or other communications to be given in connection with this Agreement must be in writing, and may be given by: (a) hand delivery; or (b) certified or registered mail and shall be deemed to have been given and received either: (i) upon actual delivery [if delivered pursuant to subsection (a) above]; or (ii) forty-eight (48) hours after a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, addressed as follows:

If to the GRANTEE: Ann Stevens
 President
 BioMed SA
 602 East Commerce Street
 San Antonio, Texas 78205

If to CITY: Director
 Economic Development Department
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966

Provided, however, that either Party may at any time change the place of receiving notice following ten (10) days written notice of such change of address to the other Party in accordance with the manner of giving notice described above.

ARTICLE XX. ENTIRE AGREEMENT

20.01 This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

ARTICLE XXI. AMENDMENTS

21.01 No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties hereto.

ARTICLE XXII. EXECUTION AUTHORITY

22.01 The Parties hereto represent and assure that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution, ordinance or action passed or

taken, to enter into this Agreement and to perform the responsibilities herein required. The signers of this Agreement represent and assure that they have full legal authority to execute this Agreement and to bind the Party for whom they are signing to all terms, performances and provisions herein contained.

EXECUTED IN TRIPPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, THIS THE _____ DAY OF _____, 2014.

CITY OF SAN ANTONIO

BIOMED SA

Carlos J. Contreras, III
Assistant City Manager

Ann Stevens
President

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Leslie O. Haby
Assistant City Attorney

BSAG PSA FY2015

of the Office of Sustainability. Upon approval of the invoice by CITY, CITY shall pay CONSULTANT no later than thirty (30) days after the date of such approval; provided, however, that such approval shall be based upon satisfactory completion of the work described in Exhibit A. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.

- 2.2 Final Payment due under the CONTRACT will not be paid until the all work, reports, data, documents and any other unfinished services necessary to complete performance under the CONTRACT have been received, performed and are approved by the CITY, as meeting all the tasks required hereunder in Section 3.1. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.
- 2.3 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.4 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the CONTRACT referenced in Section 2.1 of the CONTRACT.

III. SCOPE OF SERVICES

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the "Build San Antonio Green™ City of San Antonio Scope of Work Funding Request for FY2015", dated May 1, 2014, attached hereto as Exhibit A. Goals, objectives and performance standards for the Project will be established by the CITY'S Office of Sustainability and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Exhibit A is fully incorporated herein verbatim for all purposes, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONSULTANT.

IV. TERMINATION

- 4.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 TERMINATION WITHOUT CAUSE: The CONTRACT may be canceled by either party upon thirty (30) calendar days written notice, evidenced by a U. S. Postal Mail Return Receipt Requested for certified delivery, or an affidavit of personal delivery, provided such notice specifies an effective date of termination, which termination date shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is actually received by the other party or the certified mail

BSAG PSA FY2015

receipt evidences delivery. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party or evidence of certified mailing as described above. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.

- 4.3 TERMINATION FOR CAUSE: Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 4.4 TERMINATION BY LAW: If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 4.5 EFFECT OF TERMINATION: The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that through action or no action initiated by the CITY of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of a CONTRACT and has no funds to do so from other sources, the CONTRACT may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.

BSAG PSA FY2015

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

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 6.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 6.4 If the CONSULTANT receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

BSAG PSA FY2015

VII. OWNERSHIP OF DOCUMENTS

- 7.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this CONTRACT is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 7.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 7.3 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.4 The intellectual work products, if any, that result from this Contract shall be owned by the CITY, and as such are public property.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT 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 the CITY.
- 8.2 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, CONSULTANT will immediately:

BSAG PSA FY2015

8.2.1 Either:

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

8.2.2 CONSULTANT further agrees to:

- a) 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 CONTRACT,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided:

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONSULTANT 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,
- that the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provides CONSULTANT with written notice within 15 days following the formal assertion of any claim with respect to which the CITY asserts that CONSULTANT assumes responsibility under this section.

IX. RECORDS RETENTION

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property

BSAG PSA FY2015

of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.

- 9.2 CONSULTANT shall deliver all documents to the CITY, upon termination of the CONTRACT, in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 9.3 The CONSULTANT shall retain all records owned by or to which the CITY has the legal right of access to satisfy the City's obligations for a retention period required by the Texas Local Government Records Act, being five years from date of contract termination, and in the event of litigation or claims, whatever additional time is necessary to resolve all litigation or claims.
- 9.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such open records requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at the City's Office of Sustainability, 1400 S. Flores, San Antonio, Texas, or successor local address, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

- 11.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and meets all competence standards applicable to the services provided herein.

XII. CONFLICT OF INTEREST AND ETHICS

- 12.1 CONSULTANT acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10)

BSAG PSA FY2015

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.

- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that is has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.
- 12.3 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 12.4 **Additional Ethics Form Filing: Texas Local Government Code.** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. CONSULTANT must confer with its own legal advisor if you have questions regarding the statute or form.

XIII. INSURANCE

- 13.1 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this Contract.
- 13.2 Within ten (10) working days following execution of this Contract, CONSULTANT shall obtain a fidelity bond covering all persons handling funds received or disbursed hereunder and/or signing or co-signing checks for said fund disbursement. CONSULTANT's fidelity bond shall be in an amount of Fifty-Thousand dollars (\$50,000.00), and evidence of same shall be filed with CITY prior to any disbursement of funds hereunder but no later than ten (10) working days following execution of this Contract. CONSULTANT shall ensure that such bond shall contain a provision that

BSAG PSA FY2015

cancellation or expiration notice is sent to CITY at least sixty (60) days prior to the effective date of such cancellation or expiration.

- 13.3 Prior to the commencement of any work under this Contract, CONSULTANT shall furnish a completed Certificate of Insurance to CITY's Office of Sustainability Director and City Clerk's Office. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which certificate shall furnish and contain all required information referenced or indicated thereon. **THE CERTIFICATE MUST IDENTIFY THE PROJECT CONTRACT BY NAME, "Build San Antonio Green™ City of San Antonio Scope of Work Funding Request for FY2015"**. CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City's Office of Sustainability Director and no officer or employee shall have authority to waive this requirement.
- 13.4 CITY reserves the right to review the insurance requirements of this Contract during the effective period of this Contract and any extension or renewal hereof, if any, and to require modification of insurance coverage and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.
- 13.5 CONSULTANT's financial integrity is of interest to CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
(A) Worker's Compensation, and Employer's Liability, if applicable	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Commercial General (Public) Liability-to include but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000 or its equivalent in umbrella Or excess liability coverage
(1) Premises/Operations	
(2) Independent Contractor's Liability	
(3) Products and Completed Operations	
(4) Personal Injury	

BSAG PSA FY2015

(5) Contractual Liability

3.6 MATERIAL REQUIREMENTS: CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. All of CONSULTANT's insurance requirements under this Contract are material obligations.

13.7 CONSULTANT agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance shall contain the following required provisions.

- Name CITY and its officers, employees, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under Contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy (if applicable) shall provide a waiver of subrogation in favor of CITY.

13.8 CONSULTANT shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

**City of San Antonio
Office of Sustainability
P.O. Box 839966
San Antonio, Texas 78283-3966**

13.9 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the CONTRACT; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or

BSAG PSA FY2015

policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, CITY shall have the right to terminate the Contract, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subconsultants' performance of the work covered under this Contract.

XIV. INDEMNITY

- 14.1 Consultant 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 and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this CONTRACT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 14.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.**

BSAG PSA FY2015

XV. AMENDMENT

- 15.1 This Contract, together with its authorizing ordinance and Exhibit A, shall constitute the full and final CONTRACT between the parties hereto.
- 15.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof. Material amendments that adjust compensation or performance periods must be approved by the City Council.
- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be incorporated into this CONTRACT with notice and written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
 Attn: Director
 Office of Sustainability
 P.O. Box 839966
 San Antonio, Texas 78283-3966

CONSULTANT

Build San Antonio Green
 Attn: Commissioner Tommy Adkisson
 118 Broadway, Suite 236
 San Antonio, Texas 78205

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 Any subcontracts or assignments of interests entered into by CONSULTANT concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent

BSAG PSA FY2015

to this CONTRACT's effective date. CONSULTANT shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should CONSULTANT assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.

- 18.2 CONSULTANT's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any CONTRACT with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all Contracts with approved subcontractors.
- 18.3 CONSULTANT agrees to notify CITY of any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the CITY.
- 18.4 In no event shall such written consent, if obtained, relieve CONSULTANT from any and all obligations hereunder or change the terms of this CONTRACT.
- 18.5 CITY must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIX. SUCCESSORS AND ASSIGNS

- 19.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

XX. NONWAIVER OF PERFORMANCE

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the CONSULTANT from any covenants and conditions required in this CONTRACT.

BSAG PSA FY2015

- 20.2 Unless otherwise specifically provided for in this CONTRACT, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT 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 CONTRACT, 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 CONTRACT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV. Amendment. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. COMPLIANCE

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing foregoing laws.

Non-Discrimination. As a party to this contract, CONSULTANT 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

BSAG PSA FY2015

orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXII. VENUE AND GOVERNING LAW

22.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.

22.2 ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

XXIII. SEVERABILITY

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

XXIV. GENDER

Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

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

XXVI. ENTIRE AGREEMENT

This CONTRACT, together with its authorizing ordinance and Exhibit A, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

BSAG PSA FY2015

EXECUTED this the _____ day of September, 2014.

CITY

City of San Antonio, Texas

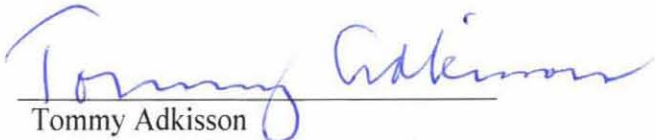
Edward Benavides, Chief of Staff
Office of the City Manager

APPROVED AS TO FORM:
Robert F. Greenblum
City Attorney

By: Assistant City Attorney

CONSULTANT

Metropolitan Partnership for Energy
(MPE), d/b/a Build San Antonio
Green



Tommy Adkisson
Chairman, Build San Antonio Green

BSAG PSA FY2015

EXHIBIT "A"

May 1, 2014

Build San Antonio Green[®]
City of San Antonio Scope of Work
Funding Request for 2015

Build San Antonio Green[®] (BSAG) is a non-profit organization founded by the City of San Antonio and other partners in 2001. BSAG is an official partnership of the City of San Antonio, Bexar County, CPS Energy, San Antonio Water System, the Greater San Antonio Builders Association, VIA Metropolitan Transit, the Alamo Area Council of Governments, the Greater Bexar County Council of Cities, and Solar San Antonio.

BSAG works with Partner organizations to develop and implement energy and emissions reduction policies for air quality improvement, water conservation, energy efficiency, and renewable energy, chiefly through the development and administration of the green building program. BSAG provides technical workshops on energy efficiency, conservation, renewable energy and green building, while promoting the Build San Antonio Green[®] program and certifying Green-Built Homes in San Antonio.

Build San Antonio Green[™] will be instrumental in helping San Antonio meeting its future sustainable growth and development goals, as laid out in the SA 2020 plan. This will be accomplished through leadership in energy & water conservation, promoting sustainable land use, green jobs training, and assuming a prominent role in local sustainability efforts.

Build San Antonio Green[®] has been recognized at the local, state and national levels for the program's accomplishments. BSAG has won numerous awards including the prestigious **2009 "Green Building Program of the Year"** award by the National Association of Home Builders, the **2009 "Texas Environmental Excellence Award"** from the Texas Commission on Environmental Quality, San Antonio Water System's **WaterSaver Partner of the Year in 2009**, the **2011 ENERGY STAR "Leadership in Housing Award,"** and most recently, **2013 National Association of Home Builders Green Award for "Advocate of the Year – State/Local Government",** and **2014 National Association of Home Builders "Advocate of the Year".**

BSAG has certified **3057 green homes** under our program to date, including 3007 single family new construction homes, 45 single family retrofit projects, and 5 multifamily projects. This has resulted in the **prevention of more than 31 Million pounds of CO₂ to date**, the equivalent of taking 2605 cars off of the road for one year. In addition, the certified homes **have saved over 44 million kilowatt-hours and resulted in more than 6 megawatts of demand reduction.**

The program has experienced rapid growth in certifying homes in Bexar County. To illustrate the program's rapid growth, in 2011 BSAG certified 266 homes, 633 homes in 2012, and in 2013 the program grew to certify 1,065 homes in the San Antonio region. In the first quarter of 2014, BSAG has already certified 491 homes, with another 533 under construction.

BSAG PSA FY2015

BSAG 2015 Request for Funding

For the 2015 budget year, BSAG is requesting \$ 50,000.00 from COSA as income to support organizational operations and activities alongside the other BSAG Funding Partners.

In the Council Consideration Request dated June 29, 2006 regarding COSA's Energy Conservation Plan, Goal 7 states that future funding to MPE be \$ 50,000.00 per year or as recommended by COSA Staff. Solicitation for 2015 Bexar County funding in the amount of \$75,000.00 has been submitted, and the 2015 funding from CPS Energy has not yet occurred due to CPS Energy's fiscal year.

BSAG requests funding from the City of San Antonio to include in the BSAG 2015 Budget to support organizational operations and activities that support the following:

1.) Certification of Green Homes through Build San Antonio Green™

Build San Antonio Green™ (BSAG) is a residential green building program of the Metropolitan Partnership for Energy and the Greater San Antonio Builders Association (GSABA). BSAG promotes conservation and efficiency, and was developed with input from partners and community stakeholders to support and encourage local rebates. MPE works with the building and development community to implement green building, while also educating legislators and insurance groups to provide incentives for Green Building. BSAG is not only San Antonio's local green building program, it is also the only program that includes and encourages the UDC Neighborhood Patterns, SAWS Rebates and Landscape List, San Antonio Landscape Care Guide, CPS Energy Rebates and Net Metering Program, and The City of San Antonio's Tree Protection Ordinance.

Homes are certified green under the BSAG program through a quality review process. Builders entering the BSAG program receive ongoing training in green building techniques, and are required to attend Continuing Education Classes (CECs). BSAG's programs consist of detailed green building checklists. Member builders submit building plans and the BSAG checklist to the BSAG office, where they are reviewed for certification by BSAG Staff. Each green home built under approved specifications will earn a certificate showing the certification level and be provided with a Homeowners Manual containing operational information about the home.

BSAG requirements are based on traditional stick frame construction and prescribes strategies to reduce electrical and water consumption, utilize resources and materials in a more efficient manner, minimize impact on the site, and improve indoor air quality. It is geared toward volume builders and affordable developers, and has received over 700 commitments for Green Homes.

Build San Antonio Green™ works to make green building affordable and thereby enticing to builders. To date Build San Antonio Green has certified more than 60 affordable homes: homes that cost \$110,000 or less. BSAG services will enhance current City housing programming by expanding application of other program components. This will substantially increase the total percentage of BSAG homes in the "affordable homes" category, and demonstrate to other builders that green building is easy, accessible, and affordable.

BSAG PSA FY2015

Tasks:

- New Member Orientation Education of Builders at BSAG Workshops
- Collection of pre-construction requirements and home submittal information
- Input home data in BSAG home's database
- Review of home plans to ensure compliance with BSAG requirements
- Conference with builder, architect, and/or subcontractor to further explore BSAG review process
- Site observations to verify several BSAG requirements including but not limited to insulation of water lines; duct sealing; on-site tree protection; construction waste management; ventilation of kitchen range hood to exterior; approved fireplace; installation of low-flow water fixtures and high efficiency toilets; and SAWS approved landscape.
- Collection of verification documents for ENERGY STAR® qualified appliances and equipment
- Collection of post-construction documents such as ENERGY STAR® HERS Certificate and Home Report
- Issue of BSAG certification upon requirements' compliance
- Updates and revisions to BSAG Homeowner Manual to reflect programmatic changes
- Homeowner education through BSAG Homeowner's Manual
- Calculation of home's energy savings and emission reduction

Deliverable(s):

- Four hundred (400) homes certified in the New Construction program(s)

2.) Administration of the *Green Retrofit* and *Energy Retrofit* Build San Antonio Green (BSAG) Programs for existing homes.

Residential *Green Retrofit* and *Energy Retrofit* Programs – The Build San Antonio Green *Green Retrofit* program was launched in 2008 and 39 homes have been certified to date. The *Green Retrofit* program is a comprehensive home renovation certification option with a focus on making home more efficient and healthier. Projects certified under this program must complete a list of Core Guidelines that include both prescriptive and performance requirements. The *Energy Retrofit* certification was developed in 2010 to offer additional options for homes that do not need extensive retrofit work in all five program areas but will still benefit from significant energy improvements. The program has seen very rapid growth and is likely to continue serving as an important certification option as demand for retrofit projects increases. The *Green Retrofit* and *Energy Retrofit* programs are gaining interest among builders..

By expanding the applications of BSAG program components, BSAG will work more closely with the Housing and Neighborhood Services Department on such programs as the Owner-Rehab. The *Green* and *Energy Retrofit* programs provide easy-to-follow formats for retrofitting existing homes. Similar to Level 1 and Level 2 of the *Green Retrofit*, the *Energy Retrofit* is in a checklist format. Builders submit plans for review by the Build San Antonio Green staff and site visits are performed for all homes certified.

BSAG PSA FY2015

Tasks:

- New Member Orientations
- Continuing Education for builders at *Green Retrofit/Energy Retrofit* BSAG Workshops
- Meeting with builders/architects/subcontractors to explain the review process and receive project's submissions
- Hosting meetings of the *Green Retrofit/Energy Retrofit* Technical Advisory Committee (TAC) to confer about changes or updates to the program
- Input home data into BSAG home's database
- Meeting and/or conference with energy rater at construction site for initial energy audit where applicable
- Site observations to verify BSAG requirements compliance
- Collection of post-construction documents
- New program development and implementation
- Issue of BSAG certification upon requirements' compliance
- Homeowner education through BSAG Homeowner's Manual

Deliverable(s):

- Ten (10) certifications through *Green Retrofit/Energy Retrofit* Programs

3.) Develop and host Green Open House Events for BSAG-Certified Homes

Build San Antonio Green help develop awareness and understanding about the availability of BSAG-certified green homes in San Antonio. In an effort to help ensure that homeowners understand the many unique features of newly constructed or renovated BSAG-certified homes, BSAG staff will conduct homeowner education classes in conjunction with builder members. Because many aspects of green buildings are dependent on behavioral factors, it is essential that those who inhabit high- performance homes have a complete understanding of their home's unique features and attributes. This will allow them to maximize their home's many efficient features and be more likely to save energy and water as well as maintain healthy indoor air quality.

Staff will work in conjunction with member builders, affordable housing providers, and other local entities in the development and execution of these events. Specific affordable and market-rate houses will be targeted for "Green Open House" events throughout the year. These events will serve to both showcase specific green certified projects and also bring different entities in the housing sector together in a collaborative effort to support the local green building industry

Tasks:

- Meetings with partners and other agencies to coordinate "Green Open House" events
- Coordination with builders to find eligible homes
- Marketing and outreach to promote events
- Hosting "Green Open House" events in collaboration with local partners

BSAG PSA FY2015

Deliverable(s):

- At least two (2) meetings with partner agencies to coordinate events
- At least two (2) “Green Open House” events throughout the year

4.) Builder Education:

BSAG will continue to reach out and educate the building and development Community on the advantages of green building through educational workshops in an effort to encourage them to build green in San Antonio. These workshops will cover the Build San Antonio Green program specifically, educating the builders on each step of the process of certifying a home through the program as well as what specific construction practices must be followed in addition to other topics related to green building, such as solar energy, ENERGY STAR® for Homes, and specific techniques, practices, and materials. All workshops will present the Build San Antonio Green program as the best option for builders wishing to build green in San Antonio, and workshop topics will be tied into the program and its requirements.

Workshops:

- Workshops about topics in green building, tied to Build San Antonio Green

Deliverable(s):

- Four (4) Green Building topics workshops

5.) Public Education & Outreach Events:

BSAG will continue to educate the public about green building and the Build San Antonio Green program. Staff will encourage the public to ask their builder or remodeler if they are a member of the Build San Antonio Green program, and also why the BSAG program is the best choice for homeowners wishing to build or remodel a green home in San Antonio. This public education will be accomplished through appearances at events throughout the year.

Outreach Events:

- City of San Antonio’s Earth Day Celebration
- City of San Antonio Historic Homeowners Fair
- Other Green Events

6.) Plan and Administer the COSA 2015 Green Building Awards

Build San Antonio Green works with our Partners to plan and administer the 2015 COSA Green Building Awards. The COSA Green Building Awards are an important service offered by the City of San Antonio to recognize noteworthy projects and innovations in the fields of green building and solar technology.

BSAG will plan and administer this event with specific tasks including the selection of a nomination committee; updating and refining the criteria for judges and selection of a judging committee; coordinating and managing the event and ceremony planning; and promoting the event and award ceremony.

BSAG PSA FY2015

Tasks:

- Selection of Nomination Committee
- Update and refine criteria for judges and assistance in selection of judging committee
- Coordinate and Manage Event Planning and Ceremony Operations
- Awards and Event Promotion

Deliverable(s):

- Selection of Nomination Committee Membership, committee meeting(s) with City staff and other stakeholders
- Selection of Judging Committee Membership, committee meeting(s) with City staff and other stakeholders
- MC event, manage PowerPoint presentations, invite media, manage seating, invite speakers, and handle event inquiries
- Marketing plan, promotions through various venues: e-blasts, presentations at various building industry meetings, committee meeting(s) with City staff and other stakeholders

TOTAL FUNDING REQUEST**\$ 50,000.00**

Through funding support of BSAG, the City of San Antonio and broader community benefit from less strain on utility supplies, infrastructure costs (including storm water abatement in some cases), and from making a smaller impact on the burgeoning urban heat island effect through green building Strategies. Communities that consist of a high percentage of green built homes, businesses, and industries benefit from less expenditure on expanded infrastructure, thereby being able to encourage new growth with reduced cost related to servicing the growth. Certification of green homes also encourages the growth of green jobs in our community.

San Antonio is now close to non-attainment status under the EPA 8-hour ozone standard. The Build San Antonio Green program is beneficial to the City of San Antonio due to the opportunity for clean air credits related to federal regulations and new business ventures for the various enterprises supporting the initiative. For example, existing buildings account for 49% of sulfur dioxide emissions, 25% of nitrous oxide emissions, and 10% of particulate emissions, along with 35% of our carbon dioxide emissions, the chief pollutant blamed for global climate change.

Other benefits include reducing the peak load for CPS Energy's system. As energy rates increase, this program makes more financial sense than ever. The City Council's Green Roundtable has identified the Build San Antonio Green program as the preferred vehicle for providing these services. BSAG is also listed as a leading program in meeting future sustainable development goals, as identified in the SA 2020 plan. In addition, CPS Energy has identified residential green building through BSAG to be a very cost-effective energy conservation strategy.

BSAG PSA FY2015

BSAG Activities & Staff Hours Break Out for COSA Operations Contract 2015	
Task 1: Certification of Green Homes through BSAG®	Budgeted
Deliverables	
1. Homes certified through BSAG® (400)	\$38,436.00
	\$38,436.00
Task 2: Administer Green Retrofit & Energy Retrofit Programs through BSAG®	
Deliverables	
1. Homes Certified through BSAG® (10)	\$1,380.00
	\$1,380.00
Task 3: Develop & Host Green Open House Events f/BSAG Cert Homes	
Deliverables	
1. Meetings w/Partner Agencies to Coordinate Events (2)	\$82.00
2. Hold "Green Open House" Events (2)	\$2,290.00
	\$2,372.00
Task 4: Builder Education	
Deliverables	
1. Green Building Topics Workshops (4)	\$866.00
	\$866.00
Task 5: Public Education & Outreach Events	
Deliverables	
1. City of San Antonio Historic Homeowners Fair - August 2014	\$256.00
2. COSA's Earth Day Celebration - April 2014	\$512.00
3. Other Green Events	\$1178.00
	\$1,946.00
Task 6: Plan & Administer Annual Green Build Awards	
Deliverables	
1. Selection of Nomination Committee	\$262.00
2. Update & Refine Award Criteria/Assist in Judge Selection	\$992.00
3. Coordinate & Manage Event Planning/Ceremony Operations	\$3,322.00
4. Awards & Event Promotion	\$424.00
	\$5,000.00
TOTAL INCOME	\$50,000.00

City of San Antonio

Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Metropolitan Partnership for Energy d.b.a. Build San Antonio Green

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

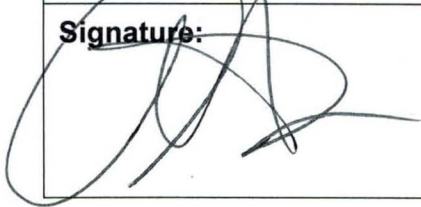
Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:



Title: Executive Director

Company or D/B/A:
Build San Antonio Green

Date:

8-12-14

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



CERTIFICATE OF LIABILITY INSURANCE

METRO-2 OP ID: SE

Attachment 22 - FY 2015 Budget Ordinance (MM/DD/YYYY)

05/01/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Walthall, Sachse & Pipes, Inc 300 E. Sonterra #1100 San Antonio, TX 78258 Walthall, Sachse & Pipes, Inc	CONTACT NAME: Walthall, Sachse & Pipes, Inc	
	PHONE (A/C, No, Ext): 210-384-0000	FAX (A/C, No): 210-384-0110
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Hartford Insurance Group		29424
INSURED Metropolitan Partnership For Energy dba Build SA Green 118 Broadway Suite 232 San Antonio, TX 78205	INSURER B: Western Surety	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	


COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			65SBATP7502	05/03/2014	05/03/2015	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			65SBATP7502	05/03/2014	05/03/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	65WBCZQ3925	05/24/2014	05/24/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Crime/Fidelity			70831093	11/20/2014	11/20/2015	Crime 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of San Antonio PO Box 839966 San Antonio, TX 78283-3966	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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STATE OF TEXAS §
§
COUNTY OF BEXAR §

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE FREE TRADE ALLIANCE SAN ANTONIO

This Agreement is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager or designee pursuant to Ordinance No. 2014-09-18-_____ dated September 18, 2014, and the Free Trade Alliance San Antonio (hereinafter "FREE TRADE ALLIANCE"); collectively, the "Parties".

WHEREAS, CITY has appropriated certain funds from its General Operating Budget; and

WHEREAS, FREE TRADE ALLIANCE is a Texas, non-profit corporation comprised of individuals and community organizations such as the CITY, the Greater San Antonio Chamber of Commerce, the San Antonio Economic Development Foundation (the "EDF"), San Antonio Water System, Port San Antonio, Hispanic Chamber, HEB, Bexar County and CPS Energy.

WHEREAS, this organization constitutes a broad community network for the purpose of promoting San Antonio as the center of international trade; and

WHEREAS, it is in the best interest of the CITY to continue its contribution to this organization for the purpose of increasing international business activity (the "PROGRAM"); and

WHEREAS, CITY wishes to engage FREE TRADE ALLIANCE to carry out such PROGRAM; and

WHEREAS, CITY designates its Economic Development Department (hereinafter referred to as "Department") as the City department, acting for its City Manager, responsible for the evaluation and fiscal monitoring of the PROGRAM; NOW THEREFORE:

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

I. PURPOSE STATEMENT

1.1 The purpose of this Agreement is for FREE TRADE ALLIANCE to develop San Antonio as the center for global trade, to promote CITY's economic development investment objectives and to maximize international business

opportunities for CITY through the North American Free Trade Agreement (hereinafter referred to as “NAFTA”) region and other target countries around the world.

II. TERM

2.1 Except as otherwise provided pursuant to the provisions hereof, this Agreement shall begin on October 1, 2014 and end on September 30, 2015.

III. PERFORMANCE

3.1 FREE TRADE ALLIANCE, in accordance and in compliance with the terms, provisions and requirements of this Agreement, agrees to perform and provide all services as set forth in Article IV (Scope of Work) of this Agreement. FREE TRADE ALLIANCE shall produce all documentation in the form of performance records and reports as required under the terms of this Agreement.

3.2 Modifications or alterations to Article IV (Scope of Work) may only be made pursuant to the prior written approval of CITY. FREE TRADE ALLIANCE shall notify CITY in writing of any event which could substantially delay the achievement of the Scope of Work as defined in Article IV.

IV. SCOPE OF WORK

4.1 FREE TRADE ALLIANCE shall promote the exports of products and services by San Antonio companies as the coordinating organization implementing the San Antonio Export Strategy. Goals and metrics for FY2015 include:

- a. Plan, coordinate and participate in 2 of the 8 trade shows listed in the research section, in agreement with and in cooperation with local Economic Development (ED) partners. The goal is to promote the export of local company's goods and/or services.
- b. Participate in 30 Business Retention and Recruitment (BRE) visits and make 24 referrals to the San Antonio Export Assistance Team SEAT. This metric will be based on the documentation submitted in *Salesforce* by providing a summary of the meeting and the communication in making the referral to SEAT members.
- c. Present at four annual briefings on export activities organized in collaboration with *Café Commerce*.
- d. Present at four annual briefings on export activities organized in collaboration with *Geekdom*.
- e. Present at two annual briefings on trade and community resources organized in collaboration with *Geekdom* for San Antonio - Mexico challenge participants.

- f. Document all activity in *Salesforce*.

4.2 FREE TRADE ALLIANCE will conduct research and engage subject matter experts to refine target countries/industries and formulate effective strategies to promote trade and exports. Goals and metrics for FY2015 include:

- a. Conduct a business survey to identify international aviation needs of the local business community based on current needs and anticipated needs within the next two years.
- b. Provide a monthly monitoring of Mexico's economic and political environment to identify any opportunities for our community's target industry sectors and relevant macro trends.
- c. Provide a one-page report after each export roundtable summarizing all relevant discussion points. This would also include all Ad Hoc committee meetings.
- d. Creation of a dashboard, to be updated monthly, based on agreed-upon trade and export variables (i.e., number of local companies engaged in foreign trade, increase in the number of relevant service providers, number of International Business Development Center (IBDC) participants, etc.). This dashboard will be published on both the Free Trade Alliance (FTA) website, as well as the *inSA* website.
- e. Develop research and subsequent report to determine local utilization of all *Exim Bank* program products to serve as a baseline for advocacy action listed in the advocacy section.
- f. Identify at least 8 industry-centric trade shows relevant to our community's target industries and in the target countries based on the *Brookings Strategy* and the *SA Economic Development Strategy* results.

4.3 Foreign Trade Zone #80: FREE TRADE ALLIANCE shall market and promote the foreign trade zone program (the "FTZ") as part of business expansion and retention strategy. In addition, FREE TRADE ALLIANCE shall:

- a. Review marketing materials and modify as required with input from economic development partners.
- b. Meet with a minimum of 5 new companies to educate and assist regarding use of the FTZ in addition to the BRE meetings.
- c. Support the Department with the administration and marketing of FTZ #80. The administration shall include the: (i) preparation of the annual report and submission for review by the CITY by January 1, 2015, with final submission by the Department to the FTZ Board by February 14, 2015; (ii) preparation of any applications for site activation, subzone designation or change in boundaries; and (iii) scheduling of site visits and reports. All reports and applications shall be submitted to the CITY's Department for final review and approval before submission.

4.4 Casa San Antonio Program: FREE TRADE ALLIANCE shall continue to work with the *Casa San Antonio Program* (the “Casas”) and CITY shall encourage the Casas to continue to refer eligible companies to the FREE TRADE ALLIANCE International Business Development Center (“IBDC”). Goals and metrics for FY2015 include:

- a. Support Casa San Antonio referrals to interested companies in trade with San Antonio.
- b. Support incoming trade missions organized by government, business organizations or sector-specific industry groups in cooperation with Department/International Relations Office/Casa San Antonio and other economic development stakeholders; primarily in the areas of community resource coordinators and matchmaking.

4.5 Advocacy: FREE TRADE ALLIANCE shall provide advocacy support on foreign trade policies critical to trade, investment and logistics issues of importance to CITY.

- a. Free Trade Agreements: monitoring and agreed-upon advocacy actions in support of agreements that would benefit our region (i.e., Trans-Pacific Partnership (TPP), United States – European Union Free Trade Agreement, World Trade Organization activity, etc.).
- b. Agreed-upon trade related issues relevant to the region (i.e., Exim Bank, border issues, etc.) during the “SA-to-DC” annual event in cooperation with CITY’s Intergovernmental Relations/Department.
- c. Continue efforts to educate the local community on FTZ benefits, with the goal of increasing utilization of this federal program.

V. PERFORMANCE RECORDS AND REPORTS

5.1 FREE TRADE ALLIANCE shall provide quarterly reports that provide detailed results of the Article IV. *SCOPE OF WORK* accomplishments for FY2015 to the Department, due 30 days after the end of the quarter.

5.2 FREE TRADE ALLIANCE shall produce a report of the annual economic impact of business generated through current or former IBDC participants, as well as other companies FREE TRADE ALLIANCE engaged that have established a presence in San Antonio. FREE TRADE ALLIANCE shall maintain accurate, current and complete governmental accounting records and supporting documentation for all expenditures of funds provided through this Agreement. FREE TRADE ALLIANCE shall retain such records, and any supporting documentation, for a minimum of five (5) years from the end of the Agreement period, or the period required by other applicable laws and regulations.

5.3 FREE TRADE ALLIANCE shall provide, to the Department, a copy of its annual audit report when presented to its Board of Directors. FREE TRADE

ALLIANCE shall give CITY and or any of CITY's duly-authorized representatives, access to and the right to examine all books, accounts, records, audit reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by FREE TRADE ALLIANCE pertaining to this Agreement. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to terminate this Agreement. In the event of a CITY examination, FREE TRADE ALLIANCE shall reimburse the CITY for any expenditures that are not directly related to this Agreement and/or not supported by the proper documentation. FREE TRADE ALLIANCE will pay the cost of this examination if the variance of expenditures exceeds 3% of the funds disbursed by the CITY.

5.4 As often and in such form as CITY may require, FREE TRADE ALLIANCE shall furnish CITY such performance records and reports deemed by CITY as pertinent to matters covered by this Agreement.

5.5 Performance records and reports, as presented to the Executive Committee meetings, shall be submitted to the CITY Department by FREE TRADE ALLIANCE on at least a quarterly basis.

VI. PERSONNEL

6.1 Both the CITY and FREE TRADE ALLIANCE shall work together to accomplish their applicable tasks as outlined in the Scope of Work described in Article IV of this Agreement. Any work subcontracted to third parties pursuant to this Agreement must be pre-approved by CITY's Department Director (the "Director").

VII. COORDINATION WITH CITY

7.1 The Director, or his designee, shall have complete authority to transmit instructions, receive information and interpret the CITY's policies and decisions with respect to materials, elements and work pertinent to the CITY's services pursuant to this Agreement. Any contact with CITY officials shall be coordinated with the Director or his designee.

VIII. FEES, EXPENSES AND BILLING

8.1 In consideration of FREE TRADE ALLIANCE'S performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in Article IV (Scope of Work) of this Agreement, CITY agrees to pay FREE TRADE ALLIANCE an amount not to exceed one hundred eighty thousand dollars and no cents (\$180,000.00).

8.2 CITY shall make payments to the FREE TRADE ALLIANCE in four (4) quarterly payments of forty five thousand dollars and no cents (\$45,000.00) upon

receipt, review and approval of the quarterly *Goals & Accomplishments Report*. CITY shall not be obligated or liable under this Agreement to any other party, other than FREE TRADE ALLIANCE, for payment of any monies, or provision of any goods or services.

8.3 No additional expenses by the FREE TRADE ALLIANCE or its sub-consultants shall be charged by the FREE TRADE ALLIANCE.

IX. LEGAL/LITIGATION EXPENSES

9.1 Under no circumstances shall the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY. FREE TRADE ALLIANCE must obtain the written approval of the CITY Attorney's Office before any funds received under this Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.

9.2 During the Term of this Agreement, if FREE TRADE ALLIANCE files and/or pursues an adversarial proceeding against CITY, such filing or pursuit shall constitute a material breach of Agreement terms and, at CITY's option, this Agreement and all access to the funding provided herein may be terminated.

9.3 FREE TRADE ALLIANCE, at CITY's option, may be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.

9.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by FREE TRADE ALLIANCE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

X. TERMINATION

10.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term, or earlier termination pursuant to any of the provisions hereof.

10.2 This Agreement may be terminated, in whole or in part, by CITY for:

A. Neglect or failure by FREE TRADE ALLIANCE to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any amendment made hereto between CITY and FREE TRADE ALLIANCE; or

B. Violation by FREE TRADE ALLIANCE of any of the provisions of this Agreement or of any rule, regulation or law to which FREE TRADE

ALLIANCE is bound or shall be bound pursuant to the terms of this Agreement.

10.3 CITY shall send notice of default to FREE TRADE ALLIANCE, subject to the provisions in Article XIX (NOTICE). The FREE TRADE ALLIANCE shall have sixty (60) days from the notice of default to cure such default (the "Cure Period"), and no funds shall be distributed during the Cure Period.

10.4 If, at the end of the sixty (60) day Cure Period, such default has not been cured, CITY shall issue a signed, written notice of termination to FREE TRADE ALLIANCE specifying the effective date of termination and the applicable provisions to be terminated.

10.5 The FREE TRADE ALLIANCE shall return all such files, documentation, materials, reports, advertising materials or other work product applicable to this Agreement, as well as any unearned fees, as requested by CITY.

XI. INDEPENDENT CONTRACTORS

11.1 It is expressly understood and agreed to by the Parties to this Agreement that CITY is contracting with FREE TRADE ALLIANCE as an independent contractor. The Parties understand and agree that CITY shall not be liable for any claims which may be asserted by any third party against FREE TRADE ALLIANCE occurring in connection with services performed under this Agreement.

11.2 The Parties further understand and agree that neither Party has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XII. CONFLICT OF INTEREST

12.1 FREE TRADE ALLIANCE acknowledges that it is informed that the Charter of the CITY 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 Agreement with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a Agreement 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 Agreement 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 above-listed individual or entity is a subcontractor on a CITY Agreement, a partner or a parent or subsidiary business entity.

12.2 Pursuant to Section 12.1 above, FREE TRADE ALLIANCE warrants and certifies, and this Agreement is made in reliance thereon, that FREE TRADE ALLIANCE, its officers, employees and agents are neither officers nor employees of the CITY. FREE TRADE ALLIANCE further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

XIII. INSURANCE REQUIREMENTS

13.1 Nothing herein contained shall be construed as limiting in any way the extent to which FREE TRADE ALLIANCE may be held responsible for payments of damages to persons or property resulting from FREE TRADE ALLIANCE's or its subcontractors' performance of the work covered under this Agreement.

13.2 Prior to the commencement of any work under this Agreement, FREE TRADE ALLIANCE shall furnish a completed Certificate of Insurance to CITY's Director and Risk Management Division at the addresses listed below in Article XIII, Section 13.7. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the CITY's Director and Risk Management Division, and no officer or employee shall have authority to waive this requirement.

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

13.4 FREE TRADE ALLIANCE's financial integrity is of interest to CITY; therefore, subject to FREE TRADE ALLIANCE's right to maintain reasonable deductibles in such amounts as are approved by CITY, FREE TRADE ALLIANCE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at FREE TRADE ALLIANCE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage
(a) Premises operation	
(b) Independent Contractors	
(c) Products/completed operations	
(d) Contractual liability	
4. Business Automobile Liability:	Combined Single Limit for Bodily injury and Property Damage: \$1,000,000 per occurrence
(a) Owned/Leased	
(b) Non-Owned	
(c) Hired Automobiles	
5. Professional Liability	\$500,000 per claim

13.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Upon such request by CITY, FREE TRADE ALLIANCE shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

13.6 FREE TRADE ALLIANCE agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Add an endorsement which names CITY and its officers, employees and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;

- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

13.7 FREE TRADE ALLIANCE shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following addresses:

**City of San Antonio
Economic Development Director
P.O. Box 839966
San Antonio, Texas 78283-3966**

**City of San Antonio
Risk Management
P.O. Box 839966
San Antonio, Texas 78283-3966**

13.8 If FREE TRADE ALLIANCE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, then CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of FREE TRADE ALLIANCE to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon FREE TRADE ALLIANCE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order FREE TRADE ALLIANCE to stop work hereunder and/or withhold any payment(s) which become due to FREE TRADE ALLIANCE hereunder until FREE TRADE ALLIANCE demonstrates compliance with the requirements hereof.

13.9 Nothing herein contained shall be construed as limiting in any way the extent to which FREE TRADE ALLIANCE may be held responsible for payment of damages to persons or property resulting from FREE TRADE ALLIANCE's or its sub-consultants' performance of the work covered under this Agreement.

XIV. INDEMNITY

14.1 FREE TRADE ALLIANCE COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE INCLUDING, BUT NOT LIMITED TO, PERSONAL BODILY INJURY, DEATH AND PROPERTY DAMAGE MADE UPON THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR

RELATED TO FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF FREE TRADE ALLIANCE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF FREE TRADE ALLIANCE AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT; ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. FREE TRADE ALLIANCE SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR FREE TRADE ALLIANCE KNOWN TO FREE TRADE ALLIANCE RELATED TO OR ARISING OUT OF FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT FREE TRADE ALLIANCE'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING FREE TRADE ALLIANCE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

14.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE IS AN INDEMNITY EXTENDED BY FREE TRADE ALLIANCE TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE; PROVIDED, HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF THE CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF THE CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE. FREE TRADE ALLIANCE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES IN CONNECTION WITH ANY SUCH INJURY, DEATH OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

XV. SEVERABILITY

15.1 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 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.

XVI. CHANGES AND AMENDMENTS

16.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment, in writing, executed by both CITY and FREE TRADE ALLIANCE and approved by CITY Council, as evidenced by a duly-authorized ordinance.

XVII. ASSIGNMENT

17.1 Any attempt to transfer, pledge or otherwise assign this Agreement without written approval shall be void *ab initio* and shall confer no rights upon any third person. Should FREE TRADE ALLIANCE attempt to assign, transfer, convey, delegate or otherwise dispose of all or any part of its right, title or interest in this Agreement without CITY's written approval, CITY may, at its option, terminate this Agreement and all rights, titles and interest of FREE TRADE ALLIANCE shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by FREE TRADE ALLIANCE or any termination hereof by CITY shall not release FREE TRADE ALLIANCE from any obligation under the terms of this Agreement, nor shall it relieve or release FREE TRADE ALLIANCE from the payment of any damages to CITY which CITY sustains as a result of such violation.

XVIII. ENTIRE AGREEMENT

18.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains 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 the same be in writing, dated subsequent to the date hereof, and executed by said Parties.

XIX. NOTICE

19.1 Except when the terms of this Agreement expressly provide otherwise, all notices, reports and deliverables to be given or made by FREE TRADE ALLIANCE to CITY pursuant to this Agreement shall be sent to:

City of San Antonio
Director, Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

or such place as may be designated by CITY from time to time in writing.

All notices reports, and documents required to be given or made by the CITY to FREE TRADE ALLIANCE pursuant to this Agreement shall be sent to:

Free Trade Alliance San Antonio
203 South St. Mary's Street
Suite 130 (1st Floor)
San Antonio, Texas 78205

XX. NO PERSONAL LIABILITY

20.1 No elected official, director, officer, agent or employee of CITY shall be charged personally or held contractually liable by or to FREE TRADE ALLIANCE under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution, of approval, or attempted execution of this Agreement.

XXI. GOVERNING LAW

21.1 This Agreement shall be governed by the laws of the State of Texas. Performance, venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

XXII. LEGAL AUTHORITY

22.1 The signatory of this Agreement for FREE TRADE ALLIANCE represents, warrants, assures and guarantees that (s)he has full legal authority to execute this Agreement on behalf of FREE TRADE ALLIANCE and to bind the FREE TRADE ALLIANCE to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

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

XXIV. SIGNATURES

24.1 FREE TRADE ALLIANCE and CITY for themselves, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained. This Agreement has been executed in triplicate originals this _____ day of _____, 2014.

AGREED TO BE EFFECTIVE October 1, 2014.

CITY OF SAN ANTONIO

**FREE TRADE ALLIANCE
SAN ANTONIO**

Carlos J. Contreras III
Assistant City Manager

By: _____
Name: _____
Title: _____

ATTEST:

APPROVED AS TO FORM:

Leticia Vacek
City Clerk

Leslie O. Haby
Assistant City Attorney

ATTACHMENT I

FY2015 Work Plan

Scope of Work Definitions for City-FTA

Contract FY2015

\$ 180,000.00

Advocacy

Description	Approximate portion of their contract in Dollars*	Approximate portion of contract as % of total Budget
Free Trade Agreements: monitoring and agreed upon advocacy actions in support of agreements that would benefit our region (i.e. TPP, U.S. - E.U., WTO activity, etc.)	\$ 6,000.00	3%
Agreed upon trade related issue relevant to the region (i.e. Exim Bank, Border Issues, etc.) during the SA-to-DC annual event in cooperation with COSA IGR/EDD.	\$ 4,000.00	2%
Foreign Trade Zone efforts to educate the local community on the benefits with the goal of increasing utilization of this federal program. This would also include engagement with all active sites in Zone #80, collecting and synthesizing information for annual report, and the production of a marketing brochure for the program.	\$ 14,000.00	8%
Total for Advocacy	\$ 24,000.00	13%

Research

Description	Approximate portion of their contract in Dollars*	Approximate portion of contract as % of total Budget
Business survey to identify international aviation needs of the local business community based on current needs and anticipated needs within the next two years.	\$ 14,000.00	8%
Monthly monitoring of Mexico's Economic and Political environment to identify any opportunities for our community's target industry sectors and relevant macro trends.	\$ 15,000.00	8%
One page report after each export roundtable summarizing all relevant discussion points. This would also include all AD HOC Committees meetings.	\$ 7,000.00	4%
Creation of a dashboard, which would be updated monthly, based on agreed upon trade and export variable (i.e. number of local companies engaged in foreign trade, increase in the number of relevant services providers, number of IBDC participants, etc.). This dashboard will be published on both the FTA website as well as the inSA website.	\$ 7,000.00	4%
Develop research and subsequent report to determine local utilization of all Exim program products to serve as a baseline for advocacy action listed in the advocacy section.	\$ 7,000.00	4%

Identify at least 8 industry centric trade shows relevant to our community's target industries and in the target countries based on the Brookings Strategy and the SA Economic Development Strategy results.	\$ 28,000.00	16%
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Total for Research	\$ 78,000.00	44%
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Export Promotion

Description	Approximate portion of their contract in Dollars*	Approximate portion of contract as % of total Budget
Plan, coordinate and participate in 2 of the 8 trade shows listed in the research section, in agreement with and in cooperation with local ED partners. The goal is to promote the export of local company's goods and/or services.	\$ 21,000.00	12%
Participate in 30 BRE visits and make 24 referrals to the SEAT. This metric will be based on the documentation submitted in Salesforce by providing a summary of the meeting and the communication in making the referral to SEAT members.	\$ 5,000.00	3%
Present at four annual briefings on exporting organized in collaboration with Café Commerce	\$ 2,000.00	1%
Present at four annual briefings on exporting organized in collaboration with Geekdom	\$ 2,000.00	1%
Present at two annual briefings on trade and community resources organized in collaboration with Geekdom for San Antonio - Mexico challenge participants	\$ 1,000.00	1%
Salesforce administration and documentation	\$ 2,000.00	1%

Total for Export Promotion	\$ 33,000.00	19%
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Support to Casa San Antonio and of Inbound Business Delegations

Description	Approximate portion of their contract in Dollars*	Approximate portion of contract as % of total Budget
Support Casa San Antonio referrals on companies interested in trade with San Antonio.	\$ 10,000.00	6%
Support incoming trade mission organized by government, business organizations or sector specific industry groups in cooperation with EDD/IRO/Casa San Antonio and other economic development stakeholders. Primarily in the areas of community resource coordinators and matchmaking.	\$ 35,000.00	18%

Total for Casa Inbound Delegation Support	\$ 45,000.00	24%
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*Rate determination is based on the total number of weeks in a year divided by the total amount of the contract.

STATE OF TEXAS	§	AGREEMENT TO USE FUNDS OF
	§	
COUNTY OF BEXAR	§	THE CITY OF SAN ANTONIO

This Agreement (“AGREEMENT”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager or designee pursuant to Ordinance No. 2014-09-18-_____, dated September 18, 2014 and San Antonio for Growth on the Eastside, Inc. (“SAGE”), a Texas non-profit corporation; collectively, the “Parties”.

WHEREAS, the City Council (the “Council”) of the CITY has recognized the community revitalization efforts and mission of SAGE to serve historically underutilized areas of the City; and

WHEREAS, in furtherance of these efforts, the Council expressed support for SAGE in its efforts to form a business assistance and community revitalization program for economic development purposes (the “Program”); and

WHEREAS, CITY has provided certain funds from its Inner City Incentive Fund (the “ICIF”) and General Fund for use by SAGE as a one-time allocation from the CITY’s adopted budget; and

WHEREAS, CITY designates its Center City Development Office as the City Department, acting for its City Manager, responsible for the evaluation and monitoring of this AGREEMENT (hereinafter referred to as “CCDO”). The Department of Finance and other City departments will function in a supporting role; and

WHEREAS, CITY now wishes to engage SAGE in meeting such objectives and following such procedures as described in this AGREEMENT and in ATTACHMENT I of this Contract pursuant to the Program; **NOW THEREFORE**:

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

I. GENERAL PROVISIONS

1. SAGE is a non-profit corporation governed by a Board of Directors with a mission of advocating and working for the area business community toward the building and sustaining of a diverse and prosperous economy.
2. SAGE, in furtherance of its mission, grants to small, diverse businesses that are unable to obtain full or partial financing through standard banking institutions.
3. SAGE agrees by the execution of this AGREEMENT to comply with any and all provisions of this AGREEMENT and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.
4. SAGE represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The signer of this AGREEMENT for SAGE represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of SAGE and to bind SAGE to all terms, performances and provisions herein contained.

6. In the event that a dispute arises as to the legal authority of either SAGE, or the person signing on behalf of SAGE, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, SAGE shall be liable to CITY for any money it has received from CITY for performance of any of the provisions herein.
7. SAGE understands that the funds provided pursuant to this AGREEMENT are funds which have been made available by CITY's ICIF fund and General fund and SAGE will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. SAGE and CITY agree that SAGE is an independent contractor, that SAGE shall be responsible to all Parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. SAGE understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either Party shall have the option of terminating this AGREEMENT by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either Party exercises the option of terminating this AGREEMENT, any and all unused funds either allocated and in possession of SAGE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to SAGE under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to SAGE.
10. SAGE understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, SAGE agrees that, at such time as any revisions are so made during the Term hereof, this AGREEMENT will be amended to include such revisions. In the event that SAGE does not agree to any changes, SAGE shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. SAGE shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
11. SAGE understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in the ICIF fund and/or General Fund expenditures, agreements funded by CITY's ICIF fund and/or General Fund, including this AGREEMENT may, at CITY's option, be reduced in a like manner. CITY will attempt to provide SAGE with as much advance notice of a potential funding reduction as is possible to allow SAGE to make budget adjustments.
12. In no event shall CITY be liable for any expense of SAGE not eligible or allowable hereunder.
13. Should SAGE fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director of the City's CCDO, or if SAGE should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to SAGE of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude CITY's termination right for successive breach of the same condition.

- b. Notwithstanding the above, SAGE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by ordinance that SAGE's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for SAGE to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
14. Should this AGREEMENT be terminated by either Party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT as determined solely by CITY after consultation with SAGE, SAGE shall refund unused funds either allocated and in possession of SAGE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to SAGE under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to SAGE.
 15. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2014 and shall terminate on September 30, 2015. This AGREEMENT may be renewed annually, for up to two (2) years, subject to appropriation of funds by City Council.
 16. SAGE shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. CITY shall review, and SAGE shall allow review of, SAGE's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.
 17. SAGE warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of SAGE or CITY.
 18. SAGE may leverage funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's CCDO.
 19. SAGE is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in this AGREEMENT and **ATTACHMENT I** and has contributed to the cause of realizing such objectives.
 20. SAGE acknowledges that this AGREEMENT cannot be assigned without the express written consent of CITY's CCDO.
 21. SAGE shall not use funds from this AGREEMENT for purposes other than those listed in Section II of this Contract without prior written consent of the CITY's CCDO.

II. SCOPE OF SERVICES

SAGE shall utilize up to three hundred fifty-eight thousand six hundred sixty-eight dollars and no cents (\$358,668.00) provided by CITY to SAGE for the funding or partial funding of SAGE

in performing its mission on behalf of the CITY, to be used by SAGE in conformance with the approved budget in **ATTACHMENT II**. The aforementioned funds shall be paid as follows:

1. SAGE shall utilize up to one hundred thousand dollars and no cents (\$100,000.00) provided by CITY from its ICIF fund for the funding or partial funding of SAGE toward its Program, in compliance with **ATTACHMENT I**. All funds utilized shall be in compliance with the CITY's ICIF fund Guidelines and shall be used only for economic development purposes. These funds shall be advanced and distributed to SAGE in one amount, to be distributed soon after the effective date of a duly passed ordinance by the City Council of the City of San Antonio authorizing the execution of, and following the execution of, this AGREEMENT.
2. SAGE shall utilize up to two hundred fifty-eight thousand six hundred sixty-eight dollars and no cents (\$258,668.00) provided by CITY from its General Fund for the funding or partial funding of SAGE for any economic development purpose. All funds utilized shall be in compliance with the CITY'S EDIF Fund Guidelines and shall be used only for economic development purposes. These funds shall be advanced and distributed to SAGE in one amount, to be distributed soon after the effective date of a duly passed ordinance by the City Council of the City of San Antonio authorizing the execution of, and following the execution of, this AGREEMENT.
3. SAGE shall also fulfill the following requirements:
 - a. SAGE shall provide CITY's CCDO with proper documentation verifying receipt of year 2014 and 2015 funding commitments from all other specified sources for SAGE, if any.
 - b. SAGE shall provide CITY's CCDO quarterly budget reports outlining contributions and expenditures (to include all sources of funding).
 - c. SAGE shall submit all required and requested documents to CITY's CCDO for proper review of SAGE expenditures and activities. Any requests for Fiscal Year 2016 funding must be submitted to CITY's CCDO by June 1, 2015.
4. The CITY's CCDO is assigned monitoring responsibility for this AGREEMENT. SAGE will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of SAGE's books, records and files on the objectives covered by this AGREEMENT. SAGE understands that CITY may require any and all books, records and files of SAGE necessary to ensure SAGE's compliance and use of generally accepted governmental accounting principles.
 - a. All such records shall continue to be available for inspection and audit for a period of five (5) years after the termination date hereof. However, if an audit or investigation of SAGE begins during the course of this five-year period, then SAGE is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. SAGE agrees that during the term of this AGREEMENT, any duly authorized representative of CITY's CCDO shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.

- c. The submission of falsified information or the failure to timely submit all information by SAGE as requested by CITY is grounds for termination of this AGREEMENT.
5. SAGE agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. SAGE will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
 6. SAGE agrees to establish internal procedures that ensure that employees funded or partially funded by this AGREEMENT have an established complaint and grievance policy.
 - a. Such grievance policy shall include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, SAGE shall follow the procedures outlined in the San Antonio Municipal Civil Service rules in regard to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
2. SAGE will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds under this AGREEMENT to assure separation of funds, unless otherwise approved by the CITY's CCDO.
3. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the CITY's CCDO.
4. **To the extent allowed by law, SAGE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal or bodily injury, death and property damage made upon the CITY directly or indirectly arising out of, resulting from or related to SAGE'S activities under this Agreement, including any acts or omissions of SAGE, any agent, officer, director, representative, employee, consultant or subcontractor of SAGE, 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 SAGE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

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

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

5. Upon completion or termination of the objectives as described in this AGREEMENT, any unused funds, rebates or credits must immediately be returned by SAGE to CITY.
6. SAGE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
7. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, SAGE will immediately refund such amount to CITY. SAGE further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The CITY's CCDO has the express authority to deduct such claims from subsequent reimbursements.
8. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following 30 days after a written request by City, SAGE shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of SAGE read the entire AGREEMENT, including all attachments, between the CITY and SAGE, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.
 - c. All CITY-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both SAGE and subcontractors related to this AGREEMENT.
 - d. If SAGE expends \$50,000.00 or more in General Fund dollars during the term of this AGREEMENT, then SAGE shall furnish the CITY'S CCDO and other City Departments designated by the CCDO with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of SAGE's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from SAGE stating whether or not

the terms and conditions of the AGREEMENT were met. If the CITY determines, in its sole discretion, that SAGE is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have SAGE pay for such audit. In addition, when SAGE has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.

9. SAGE understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting.

IV. INSURANCE REQUIREMENTS

1. Prior to the commencement of any work under this AGREEMENT, SAGE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s CCDO, which shall be clearly labeled “San Antonio for Growth on the Eastside Agreement To Use Funds” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate and endorsements have been received and approved by the City’s CCDO. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
2. The CITY reserves the right to review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverage’s and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. In no instance will CITY allow modification whereby CITY may incur increased risk.
3. SAGE’s financial integrity is of interest to the CITY; therefore, subject to SAGE’s right to maintain reasonable deductibles in such amounts as are approved by the CITY, SAGE shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at SAGE’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

f. Damage to property rented by you	\$100,000
2. Directors and Officers (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

4. SAGE agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of SAGE herein, and provide a certificate of insurance and endorsement that names the SAGE and the CITY as additional insureds. SAGE shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the AGREEMENT for all purposes.
5. As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). SAGE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. SAGE shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: _Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

6. SAGE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.

- Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SAGE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend SAGE's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
 8. In addition to any other remedies the CITY may have upon SAGE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order SAGE to stop work hereunder, and/or withhold any payment(s) which become due to SAGE hereunder until SAGE demonstrates compliance with the requirements hereof.
 9. Nothing herein contained shall be construed as limiting in any way the extent to which SAGE may be held responsible for payments of damages to persons or property resulting from SAGE's or its subcontractors' performance of the work covered under this AGREEMENT.
 10. It is agreed that SAGE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this AGREEMENT.
 11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
 12. SAGE and any Subcontractors are responsible for all damage to their own equipment and/or property.

V. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION POLICY

1. SAGE agrees to post in a conspicuous place available to employees and applicants for employment funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. SAGE will, in all solicitations or advertisements for employees placed by or on behalf of SAGE, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation.
3. Non-Discrimination. As a party to this AGREEMENT, SAGE 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.
4. SAGE agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. SAGE will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.

5. In the event of SAGE's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and SAGE may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. SAGE further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of SAGE on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of SAGE;
 - c. No litigation or proceedings are presently pending or threatened against SAGE or, if pending, have been disclosed by SAGE in writing to CITY;
 - d. None of the provisions contained herein contravene or in any way conflict with the authority under which SAGE is doing business, or with the provisions of any existing indenture or agreement of SAGE;
 - e. SAGE has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
 - f. None of the assets of SAGE are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by SAGE to CITY.

VII. LEGAL/LITIGATION EXPENSES

1. Under no circumstances will the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. SAGE must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.
2. During the term of this AGREEMENT, if SAGE files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if it is found that SAGE has violated this Article.
3. SAGE, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.
4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by SAGE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AMENDMENTS

1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and SAGE.
2. It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

IX. SEVERABILITY OF PROVISIONS

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 this 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.

X. NON-WAIVER OF PERFORMANCE

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall 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 CITY 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 any 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.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

1. All SAGE invoices for eligible expenditures pursuant to this AGREEMENT must be submitted to City's CCDO by SAGE no later than ninety (90) days after SAGE incurs the expense.
2. SAGE understands and agrees that SAGE is required to refund money, pursuant to 80(R) HB 1196, that SAGE has received from CITY through this Agreement, in the event of SAGE's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

XII. ENTIRE AGREEMENT

This AGREEMENT constitutes the final and entire agreement between the Parties hereto and contains 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 hereof, and duly executed by the Parties.

XIII. NOTICE

1. For purposes of this AGREEMENT, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Director
Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

SAGE:

Executive Director
San Antonio for Growth on the Eastside
220 Chestnut
San Antonio, Texas 78202

and

City Attorney's Office
Commerce & Visitor's Services Division
City Hall, 3rd Floor
San Antonio, Texas 78205

2. Notice of changes of address by any Party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other Party's last known address within five (5) business days of such change.

XIV. PARTIES BOUND

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

XV. GENDER

Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVI. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XVII. TEXAS LAW TO APPLY

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.

XVIII. CAPTIONS

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

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____ 2014.

CITY OF SAN ANTONIO

SAN ANTONIO FOR GROWTH
ON THE EASTSIDE

Carlos J. Contreras, III
Assistant City Manager

Jackie L. Gorman
Executive Director

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Leslie Orton Haby
Assistant City Attorney

ATTACHMENT I
Business Assistance and Community Investment Program

Business Assistance and
Community Investment Program (the “Program”)
Utilizing Appropriated ICIF Funds

Fiscal Agent: SAGE – SAGE will maintain a separate checking account for ICIF funds
Potential Use of Funds for Economic Development Purposes:

1. Grants to businesses/projects

Process Flow of Funds:

Grant Program –

1. SAGE will identify grant opportunities for businesses or projects in the Eastside of San Antonio.
2. Once identified, grant is proposed to:
 - a. SAGE Grant Review Committee
 - b. SAGE Board of Directors (Board action required)
 - c. If approved, grant is made to business/project under a Grant Agreement with performance measures.
 - d. SAGE disburses grant to designated/contracted recipient in accordance with the terms of the Grant Agreement.

Reporting

1. SAGE will provide quarterly reports on the use of these funds to include:
 - a. Grant Program
 - i. Number of Applications Received
 - ii. Number of Grants Awarded
 - iii. Name of Recipient Business, Description of Project and Dollar Amount of Grant
 - iv. Total dollar amount of grants awarded during the period
 - v. Total dollar amount of grants awarded during the life of the fund

ATTACHMENT II
Budget

SAGE**FY 2015 Funding Summary**

Operations (General Fund)	\$258,668.00
Façade Program (General Fund - Inner City Incentives)	\$100,000.00
TOTAL FY 2015 FUNDING	\$358,668.00

Operations (General Fund)

	Commitment Item	FY 2015 PROPOSED
5407030	Contrib to Other Agencies	\$258,668.00
CONTRACTUAL SERVICES		

Façade Program (General Fund - Inner City Incentives)

	Commitment Item	FY 2015 PROPOSED
5201040	Fees to Prof Contr.	\$100,000.00
CONTRACTUAL SERVICES		\$100,000.00

STATE OF TEXAS

COUNTY OF BEXAR FUNDING AGREEMENT

CITY OF SAN ANTONIO

This Agreement (the "Agreement") is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2014, and the San Antonio Zoological Society, (hereinafter referred to as "Zoo").

WITNESSETH:

WHEREAS, the Department of Parks and Recreation is designated as the managing City Department for the City; and

WHEREAS, the City has adopted a budget for expenditure of Hotel Occupancy Tax funds, and included therein is an allocation of **\$306,597** funds for the San Antonio Zoo (hereinafter referred to as "Project" or "Program");

NOW THEREFORE:

The parties hereto agree as follows:

1. The Zoo will operate and open to the public a zoo of a like quality and similar operating hours as it has historically done, and carry out all activities and services in a manner satisfactory to the AZA and in compliance with the budget submitted and attached as Exhibit A.
2. In consideration, the City will pay Zoo, as requested by the Zoo from time to time for those certain expenditures set out in Exhibit A attached hereto an amount, which, in aggregate will not exceed the amount of **\$306,597** (the "Funds").
3. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2014 and shall terminate on September 30, 2015.
 - (a) The Zoo understands that this Agreement will terminate as provided in this Section, and that there is no guarantee of renewal for the following fiscal year.
4. All Funds and accounts into which the Zoo may deposit the Funds will be subject to audit and review according to the City Operational Guidelines and City of San Antonio General Provisions. The City's Department of Parks and Recreation will have the authority to perform all such accounting functions or delegate all or part of the responsibility to the Zoo.
5. The Zoo shall be required to furnish the Parks and Recreation Department an audited financial statement for the budget line items funded by or through the City as set out in Exhibit A, prepared by an independent auditor (CPA) within one-hundred and twenty (120) days of the close of the Zoo's fiscal year or termination of this Agreement. In addition to the audited financial statements or program-specific audit(s), a copy of the management letter (Report on the Conduct of Audit) should be submitted.

The financial disclosure to be provided by the Zoo to the City under the terms of the Lease shall be deemed sufficient to meet this requirement, however, the Financial Statements must be accompanied by a schedule of receipts and disbursements by budgeted cost category for each of the line items to be funded by or through the City as listed in Exhibit A.

Zoo shall also ensure that a copy of the audited financial statements and any management letter be sent from the office of the independent auditor directly to the City of San Antonio, Office of the City Auditor with a copy to the Department of Parks and Recreation.

6. Payment and financial transactions shall be as follows:
- (a) payments shall be made upon receipt of billing from the Zoo;
 - (b) Zoo agrees that all request for reimbursement shall be accompanied with documentation stating where requested funds are allocated in Exhibit A, in a manner as may be reasonably required by the Department of Parks and Recreation;
 - (c) the final request for payment to the City must be submitted not later than sixty (60) days after the contract end date;
 - (d) an accounting system which accurately reflects all costs chargeable (paid and unpaid) with the Funds is mandatory. A Receipts and Disbursements Ledger of paid invoices relating to the matters set out in Exhibit A must be maintained which will reflect paid invoices revealing check number, date paid and evidence of goods or services received;
 - (e) all records and files on matters funded by this Agreement will be open for inspection and audit at any reasonable time during the term hereof by representatives of the City or the State or Federal Government, and shall continue to be so available for a period of three (3) years after the termination date hereof. If at the end of three (3) years, there is litigation or if the audit report covering such Agreement has not been accepted, the Zoo shall retain the records until the resolution of such litigation or audit.
 - (f) the City shall not be obligated to any third parties (including any subcontractors of the Zoo);
 - (g) Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given the Zoo for failure to comply with this Agreement. Specifically, the City may withhold reimbursements in cases where it determines that the Zoo is not in compliance with this Agreement.
7. The City's Department of Parks and Recreation is assigned monitoring, fiscal control, and evaluation of the Zoo's use of Funds as set out in Exhibit A. Therefore, at such times and in such form as may be required, the Zoo shall furnish such statements, records, data, and information and permit such interviews with personnel and board members pertaining to the matters covered by this Agreement.
8. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any audit, the Zoo will refund such amount to the City. The Zoo further authorizes the City to deduct such amount or charge as a claim against future payments.
9. The Zoo warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the sums to be paid under the terms of this Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
10. The Zoo agrees that neither the program nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or in any extent engaged in the conduct of political activities in violation of its tax-exempt status. Prohibited activities include, but are not necessarily limited to, the assignment by the Zoo of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities, to provide voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

11. The Zoo agrees that under no circumstances will the Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
12. Zoo agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.
13. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Zoo and evidenced by passage of a subsequent City ordinance, as to City's approval.
14. The Zoo shall not assign or transfer the Zoo's interest in this Agreement without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.
15. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Director
 Department of Parks and Recreation
 114 West Commerce Street, 11th Floor
 San Antonio, Texas 78205

ZOO

San Antonio Zoological Society
 3903 N. St. Mary's Street
 San Antonio, Texas 78212-3199

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

16. No elected official, director, officer, agent or employee of City or Zoo shall be charged personally or held contractually liable by or to City or Zoo under any term or provision of this Agreement, or because of any breach thereof, or because of its or this execution, approval, or attempted execution of this Agreement.
17. The Zoo will adhere to City of San Antonio policies and procedures, as they now exist or as they may subsequently be adopted, in all respects, so that Zoo's policies will be no more liberal than the City of San Antonio's policy and procedures. These are highlighted in Operational Guidelines and General Provisions for the City of San Antonio Funded Projects, and may be amended from time to time to reflect any subsequent Operational Guidelines and General Provisions incorporating City policies and procedures.
18. 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 City, 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 this 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.
19. Should the Zoo fail to fulfill, in a timely and proper manner, obligations under this Agreement and (i) it shall not correct any such failure within sixty (60) days following the date the City provides

the Zoo of written notice of such violation, or (ii) if such default cannot be reasonably cured within sixty (60) days of such notice, if the Zoo has failed to begin to cure such matter within sixty (60) day period and diligently pursue such cure thereafter, the City shall thereupon have the right to terminate this Agreement by sending written notice to the Zoo of such termination and specify the effective date thereof. The Zoo shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.

- 20. All of the work performed under this Agreement by the Zoo shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.
- 21. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 22. Non-Discrimination. As a party to this Agreement, Zoo 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.
- 23. The signer of this Agreement for City and the Zoo each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and the Zoo respectively, and to bind City and the Zoo to all of the terms, conditions, provisions and obligations herein contained.
- 24. This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersedes all prior negotiations, representations, or agreements, either oral or written.

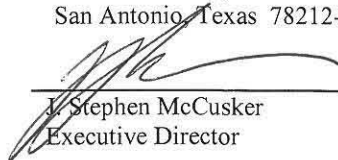
In witness of which this Agreement has been executed effective the _____ day of _____, 2014.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Xavier D. Urrutia, Director
Parks and Recreation Department

San Antonio Zoological Society
3903 N. St. Mary's Street
San Antonio, Texas 78212-3199



J. Stephen McCusker
Executive Director

APPROVED AS TO FORM:

City Attorney

Exhibit A

**San Antonio Zoo
City of San Antonio Grant
Proposed Uses Fiscal Year 2015**

Marketing & Public Affairs	
Media Outlets	\$200,000
Production Cost	15,000
Brochures/Handouts	20,000
Membership Expense	
Direct Mail	61,597
Magazine Expense	10,000
Total	\$306,597

Contract #

**Senior Nutrition Program (SNP)
Site Lease Agreement for Governmental Entities
With**

This Agreement (hereinafter referred to as "Lease Agreement") is made and entered into by and between _____, (hereinafter referred to as "LANDLORD") and the City of San Antonio (hereinafter referred to as "TENANT"), a Texas Municipal Corporation, acting by and through its Director of the Department of Human Services Director, or her designated representative pursuant to Ordinance No. _____, passed and approved on _____.

[The entire section 1 may be duplicated for multiple sites]

[If applicable, an additional descriptor or site name should be included in the following section; if not the phrase ("described as the _____") should be deleted]

1. For and in consideration of the public benefit to be derived from TENANT's operation of its Senior Nutrition Program, LANDLORD hereby leases to TENANT that portion of the _____ located at _____ [described as the _____] (hereinafter referred to as the "Leased Premises").
2. The term of the Lease Agreement shall commence on October 1, 2014, and shall remain in effect for an initial term of one (1) year and will be automatically renewed on a yearly basis thereafter so long as funds are available; provided however, either LANDLORD or TENANT can terminate this Lease Agreement upon thirty (30) days written notification to the other party and/or this Lease Agreement may be amended upon the signed written agreement of both parties. This Agreement terminates and supersedes all prior lease agreements between Lessor and Lessee for the provision of senior services.
3. TENANT shall have the right to occupy and use the Leased Premises only for the purpose of providing nutrition services for persons 60 years of age or older and their spouses, regardless of the spouse's age, Monday through Friday during the hours of _____ a.m. to _____ p.m.
4. TENANT shall not assign the Lease Agreement.
5. LANDLORD represents and warrants that the Leased Premises are in compliance with the applicable accessibility requirements for facilities under the American with Disabilities Act, as amended.
6. TENANT shall not conduct or permit to be conducted on the Leased Premises any activities or events that violate the law, or that constitute a nuisance or hazard. Any attempt by TENANT to conduct or permit such activities or events shall be good cause for immediate termination of the Lease Agreement by LANDLORD.

7. TENANT shall comply with all laws, regulations, and ordinances applicable to the Leased Premises.
8. TENANT shall have the sole responsibility to secure in TENANT's name any permits or licenses required for TENANT's activities or events held on the Leased Premises.
9. LANDLORD will not charge TENANT rent or any other fee for the use of the Leased Premises as set out in the Lease Agreement.
10. Each party agrees to clean the Lease Facility after use for the use of the other party.
11. TENANT acknowledges that it has fully inspected the Leased Premises and on the basis of such inspection TENANT accepts the Leased Premises as suitable for the purpose for which it is leased including building, furnishings, fixtures, and equipment.
12. LANDLORD shall be responsible for the adequate maintenance and repair of the Leased Premises, to include but not be limited to: the parking lot, roof, floors, HVAC system, electrical systems, plumbing, extermination, structural soundness of the building, and any other premises defect or deficiency affecting the health or safety of the seniors and visitors. Should the Leased Premises no longer be suitable for TENANT's intended purposes, TENANT may immediately terminate this Lease Agreement.
13. TENANT shall not have the use of any furnishings and equipment within the Leased Premises with the exception of the tables, the chairs, the kitchen, and all the kitchen equipment.
14. TENANT shall provide and keep in force during the term of the Lease Agreement insurance covering TENANT's liability for personal injury and property damage in an amount not less than \$500,000.00 or TENANT can be self-insured for that amount.
15. Throughout the term of the Lease Agreement, TENANT and its representatives, agents, and employees, shall have first priority to all parking spaces adjacent to the Leased Premises during the hours of [REDACTED] a.m. to [REDACTED] p.m. LANDLORD may utilize the parking lot area for parking during all other hours.
16. All notices to be given under the Lease Agreement shall be in writing and shall either be personally served against a written receipt therefor or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address that appears below. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date:

LANDLORD: [Enter Contact name, title, address]

[If copy is needed, add the following; if not, delete:

With a copy to: Enter Contact name, title, address]

TENANT: Senior Nutrition Program
Senior Services Division
Department of Human Services
106 S. St. Mary's Street, 7th Floor
San Antonio, Texas 78205

With a copy to: City Clerk
City of San Antonio
P.O. Box 839966
2nd Floor
San Antonio, Texas 78283-3966

17. The Lease Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties are performable in Bexar County, Texas. Venue for any legal action, claim or dispute arising directly or indirectly as a result of this Lease Agreement shall be in Bexar County, Texas.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

18. The Lease Agreement constitutes the final and entire agreement between LANDLORD and TENANT and contains all of the terms and conditions agreed upon. No other agreement, oral or otherwise, regarding the subject matter of the Lease Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the parties.

FULLY EXECUTED as of the date of the last party to sign below.

[Signature blocks may be updated with appropriate names/titles]

LANDLORD:

TENANT: City of San Antonio

By: _____
Nelson W. Wolff
Bexar County Judge

By: _____
Melody Woosley, Director
Department of Human Services

Date

Date

ATTEST:

APPROVED AS TO FORM:

By: _____
County Clerk

By: _____
Assistant City Attorney

APPROVED AS TO LEGAL FORM:
for Susan Reed, Criminal District Attorney

By: _____
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FINANCIAL CONTENT:

By: _____
County Auditor

By: _____
Executive Director/Budget Officer
Planning & Resource Management Department

Senior Nutrition Program (SNP)
Site Lease Agreement for Non-Governmental Entities
With

This Lease Agreement is made and entered into by and between the City of San Antonio (hereinafter referred to as "Lessee"), a Texas Municipal Corporation, acting by and through the Director of the Department of Human Services, or her designated representative, pursuant to Ordinance No. _____, passed and approved on _____, and _____ (hereinafter referred to as "Lessor").

WITNESSETH:

1. For and in consideration of the mutual agreements considered herein and subject to the terms and conditions hereinafter stated, Lessor hereby leases to the Lessee that portion of _____ located at _____ (hereinafter referred to as the "Leased Premises").
2. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2014 and shall remain in effect for an initial term of one (1) year, and will be automatically renewed on a yearly basis thereafter so long as funds are available; provided however, either Lessor or Lessee can terminate this Agreement upon thirty (30) days written notification to the other party and/or this Agreement may be amended upon the signed written agreement of both parties. This Agreement terminates and supersedes all prior lease agreements between Lessor and Lessee for the provision of senior services.
3. The Lessee shall have the right to occupy and use the Leased Premises from Monday through Friday, from _____ a.m. to _____ p.m. (the "Project Hours") for the following purpose and no other, and this tenancy shall not be assigned or sublet: to provide nutrition services for persons 60+ years of age and their spouses, regardless of spouse's age.
4. Lessor represents and warrants that the Leased Premises are in compliance with the applicable accessibility requirements for facilities under the American with Disabilities Act, as amended.
5. Lessee shall not conduct or permit to be conducted on the Leased Premises any activities or events which violate the law, constitute a nuisance or hazard, or which in the opinion of the Lessor would offend the sensibilities of the people living in the area. Any attempt by Lessee to conduct or permit such activities or events shall be good cause for immediate termination of the Lease Agreement by Lessor. Lessor shall notify the Lessee of the offending activity or event and give Lessee the opportunity to correct the situation to Lessor's satisfaction. In the event that Lessor is dissatisfied with Lessee's corrective action, Lessor may terminate the Lease Agreement with seven (7) calendar days' notice so that Lessee is given adequate opportunity to make alternate arrangements and minimize interruption of service to seniors.
6. Lessee shall comply promptly with all laws, rules and orders of federal, state, and municipal governments and their departments and agencies applicable to the Leased Premises.
7. Lessee shall have the sole responsibility to secure in Lessee's name any permits or licenses required for Lessee's activities or events held on the Leased Premises, except as determined by Lessor.

[Section 8's phrase, "not later than one week prior to the commencement of the activities scheduled," may be revised depending on site requirements]

8. Lessee shall pay \$_____ monthly to the authorized representative of Lessor for the time reserved in this Lease. Said sum is to be paid to Lessor's representative not later than one week prior to the commencement of the activities scheduled. Monthly payments are due between the 1st and 15th of each month.

9. Lessor agrees and understands that Lessee has projected costs for this Lease Agreement and Lessee expects to pay all obligations of the Lease Agreement from projected revenue sources, but all obligations of Lessee are subject to annual appropriation by the San Antonio City Council or, if applicable, availability of State of Texas or Federal grant funds, in future years after the City of San Antonio fiscal year ending September 30, 2014 should this Lease Agreement continue for any additional period or periods beyond such date. If City Council does not appropriate funds for any given year of this Lease Agreement or if grant funds are not received from the State or Federal government, then this Lease Agreement shall automatically terminate without recourse to Lessor.
10. The Lessee acknowledges that it has fully inspected the Leased Premises and on the basis of such inspection Lessee hereby accepts the Leased Premises as suitable for the purpose for which same is leased including any building, furnishings, fixtures, and equipment.

[Section 11 may be deleted where not applicable and replaced with "This section intentionally left blank":]

11. Lessor shall be responsible for the adequate maintenance and repair of the Leased Premises, to include but not be limited to, the parking lot, roof, floors, HVAC systems, electrical systems, plumbing, the structural soundness of all buildings, and any other premises defect or factor affecting the health and safety of seniors and visitors. Should the Lessor not adequately maintain or repair the Leased Premises as set forth in this section, Lessee may elect to terminate this Lease Agreement upon seven (7) calendar days written notice.
12. Each party agrees to clean the Leased Premises after use for the use of the other party.
13. Time is of the essence with reference to all payments and time of tenancy and any extra time for any reason desired by Lessee must first be approved in writing by the Lessor's representatives and must be paid for in accordance with the current rules and regulations governing the rental fees for the subject facility.
14. Lessor shall pay for all fees and costs for electricity, extermination, gas, water, wastewater, and garbage.

[Section 15 may be modified depending on what is allowed to be used on the Leased Premises]

15. It is expressly understood and agreed that Lessee shall not have the use of any furnishings and equipment within said Leased Premises with the exception of any item described as follows: Tables and chairs in the Leased Premises, the kitchen, and all the kitchen equipment.
16. Lessee shall provide and keep in force during the term of this Lease Agreement, liability insurance covering Lessee for liability to the extent permitted by law, for property damage and personal injury in an amount not less than \$500,000.00, or be self-insured to the applicable limit.
17. **LESSOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the LESSEE and the elected officials, employees, officers, directors, volunteers and representatives of the LESSEE, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the LESSEE directly or indirectly arising out of, resulting from or related to LESSOR'S activities under this LEASE AGREEMENT, including any acts or omissions of LESSOR, any agent, officer, director, representative, employee, consultant or subcontractor of LESSOR, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this LEASE AGREEMENT, all without however, waiving any governmental immunity available to the LESSEE under Texas law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF LESSEE, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF LESSEE, UNDER THIS LEASE AGREEMENT. The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

LESSOR shall advise the LESSEE in writing within 24 hours of any claim or demand against the LESSEE or LESSOR known to LESSOR related to or arising out of LESSOR'S activities under this LEASE AGREEMENT, and shall see to the investigation and defense of such claim or demand at LESSOR's cost. The LESSEE shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSOR of any of its obligations under this paragraph

It is the EXPRESS INTENT of the parties to this LEASE AGREEMENT, that the INDEMNITY provided for in this section (Section 15), is an INDEMNITY extended by LESSOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the LESSEE from the consequences of LESSEE's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section shall apply only when the NEGLIGENT ACT of the LESSEE is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the LESSEE is the sole cause of the resultant injury, death, or damage. LESSOR further AGREES to DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE LESSEE and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

- 18. Throughout the term of this Lease Agreement, Lessee and its representatives, agents and employees, shall have first priority to all parking spaces adjacent to the Leased Premises during Project Hours. Lessee recognizes that Lessor may utilize the parking lot area for parking during non-Project Hours.
- 19. Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either party to the other may be effected by personal delivery, or in writing by certified mail, postage prepaid, return receipt requested.

LESSOR: **[Enter Lessor's contact, title, and address]**

LESSEE: Senior Nutrition Program
Senior Services Division
Department of Human Services
106 S. St. Mary's Street, 7th Floor
San Antonio, Texas 78205

with a copy to the City Clerk, City of San Antonio, P.O. Box 839966, 2nd floor, San Antonio, Texas 78283-3966.

- 20. This Lease 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. Venue for any legal action, claim or dispute arising directly or indirectly as a result of this Lease Agreement shall be in Bexar County, Texas.

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21. This Lease Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise regarding the subject matter of this Lease Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the parties.

FULLY EXECUTED as of the date of the last party to sign below.

[Signature block may be modified with the appropriate information]

LESSOR: [Enter Legal Name of Lessor]

LESSEE: City of San Antonio

Authorized Signature

Melody Woosley, Director
Department of Human Services

Date

Date

Printed Name/Title

APPROVED AS TO FORM:

Assistant City Attorney

STATE OF TEXAS

Contract # _____

COUNTY OF BEXAR

**SENIOR NUTRITION PROGRAM
VENDOR SITE AGREEMENT
WITH**

CITY OF SAN ANTONIO

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Human Services pursuant to Ordinance No. _____ passed and approved on _____, and _____ (hereinafter referred to as "Vendor").

WITNESSETH:

WHEREAS, the Alamo Area Council of Governments, hereinafter referred to as "AACOG," grants funds to the City, which funds are supplemented by the City through its General Fund, for senior nutrition services to be provided through the Senior Nutrition Program ("the Project"); and

WHEREAS, the City has adopted a budget for expenditure of the grant funds and General Fund dollars, and included therein is an allocation of funds for the Project; and

WHEREAS, the City's Department of Human Services is designated as the representative agency of San Antonio and Bexar County for administration of the Project; and

WHEREAS, the Department of Human Services, Senior Services Division, hereinafter referred to as "the Project Office," is responsible for day-to-day administration of the Project; and

WHEREAS, the City wishes to engage the Vendor to carry out the Project at _____, a nutrition center site (the "Center"); NOW THEREFORE:

The parties hereto agree as follows:

[The following article may be revised where indicated]

I. Consideration

1.1 The Vendor shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Scope of Work/Project Requirements set forth in Article IV of this Agreement at the Center.

1.2 In consideration, the City shall pay Vendor on a fixed unit rate basis for meals served as described in Article IV of this Agreement at the fixed unit rate price of \$_____ for Congregate Site Management. This fixed unit rate is the gross receipt amount. **[City shall also reimburse Vendor a monthly amount of \$_____, not to exceed an annual total of \$_____, for operational costs associated with the Project and billed to the City pursuant to Section 1.4 of this Agreement.]**

1.3 The Vendor acknowledges that the City's obligation hereunder for payment in consideration of full and satisfactory performance of activities described in this Agreement is limited to monies allocated from the General Fund and received from AACOG program income, and any other originating funding source.

1.4 Payment and financial transactions shall be as follows:

- (a) Reimbursement to the Vendor on a fixed unit rate price by the City's Department of Human Services shall be made monthly upon receipt of billing from the Vendor. Vendor shall comply with the Project Roster Due Date schedule which is attached hereto and incorporated herein for all purposes as **Attachment VI.**

- (b) The costs of goods purchased through the City of San Antonio's Central Purchasing (hereinafter referred to as "Central Purchasing") will be paid directly by the City and are included in the fixed unit rate for Congregate Site Management in Section 1.2 of this Agreement.
- (c) All requests for payment shall be accompanied by documentation as may be required by the City's Department of Human Services.
 - i. The Vendor shall be reimbursed only for those meals served pursuant to this Agreement, **[and a monthly reimbursement up to \$_____ for operational costs pursuant to Section 1.2 of this Agreement.]**
- (d) Vendor shall maintain an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. Vendor shall maintain a Receipts and Disbursements Ledger. Vendor shall maintain a general ledger with an Income and Expense Account for each budgeted line item, and shall file paid invoices revealing check number, date paid and evidence of goods or services received according to the expense account to which they were charged.
- (e) The City shall not be obligated to any third parties including any sub-contractor/sub-vendors of the Vendor.
- (f) Notwithstanding any other remedy contained herein, or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given the Vendor for failure to comply with the letter or spirit of this Agreement. Specifically, the City may withhold reimbursements in cases where it determines that the Vendor is not in compliance with this Agreement or has not obtained satisfactory accomplishment of projected program goals. All other program income collected by Vendor during the grant period shall be forwarded to the City of San Antonio monthly in conjunction with the roster due dates as specified in **Attachment VI**, and as stated in paragraph 1.4 herein. The Vendor shall comply with the provisions of the **Department of Human Services Cash Handling Procedures**, which is attached hereto and incorporated herein for all purposes as **Attachment III**.
- (g) The Vendor shall regularly administer its Project's accounting on an accrual basis which accurately reflects all costs incurred (paid and owed) by the Vendor and shall maintain separate accounting records on the Project and a separate bank checking account of Project funds.
- (h) Vendor costs or earnings under this Agreement may not be claimed under another agreement or grant.

II. Recapture of Payments

- 2.1 If the Vendor has failed to comply with the terms of this Agreement, which governs the use of monies appropriated under this Agreement, or if the Vendor has received funds in excess of those actually earned, the City may take appropriate action including the recapture of payment and/or withholding of funds.

III. Agreement Period

- 3.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on _____, 2014 and shall remain in effect for an initial term of one (1) year, and will be automatically renewed on a yearly basis thereafter so long as funds are available, unless amended or terminated pursuant to the terms of this Agreement. This agreement terminates and supersedes all prior site agreements between City and Vendor for the provision of senior nutrition services.

[The following article may be revised to include further requirements as appropriate]

IV. Scope of Work/Project Requirements

- 4.1 City may enforce, or waive enforcement of any of, the terms of this Agreement without prejudice to any rights or remedies (whether set forth in this Agreement or provided for by law or in equity) which might otherwise be available to the City.

- 4.2 Vendor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City, in compliance with the **Scope of Work** affixed hereto and incorporated herein for all purposes as **Attachment II**, and in compliance with the **Senior Nutrition Program (SNP) Operations Manual** attached hereto and incorporated herein for all purposes as **Attachment I**.
- 4.3 Collection of fees and donations for meals:
- 4.3.1 The Vendor shall ensure that a meal fee, to recover the full cost of the meal, is collected from all persons who are not eligible for services. Meals may be provided to guests and others who are not eligible, for a fee, if the provision of this meal does not deprive an eligible Project participant of a meal.
- 4.3.2 The Vendor shall provide a voluntary opportunity for eligible Project participants to donate to the cost of services while protecting the individual's privacy.
- 4.3.3 The Vendor shall safeguard and account for such contributions as program income in accordance with the **SNP Operations Manual in Attachment I**, and shall forward all contributions to the City monthly on dates to be specified by the City's Department of Human Services' Senior Services Division. Vendor shall handle all program income in accordance with the **Cash Handling Procedures in Attachment III** and Section 1.4(f) of this Agreement.
- 4.3.4 Vendor shall allow the City to post a sign at the Center, which identifies the full cost of the services, the suggested eligible participant contribution, and a statement that services shall not be denied because the eligible participant cannot or will not contribute.

V. Applicable Laws and Regulations

- 5.1 Vendor shall comply with all applicable laws, rules, regulations and codes of the United States and the state of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City and County of Bexar in its performance of all of the work under this Agreement.
- 5.2 The Vendor understands that certain funds provided to it pursuant to this Agreement are funds which have been made available by the City and that it will, therefore, comply with all rules, regulations, policies, and procedures applicable to these funds as directed by the City. This section shall also incorporate and the Vendor agrees to abide by any and all future amendments or additions to such rules and regulations as they may be promulgated.
- 5.3 The Vendor agrees to administer the Project in accordance with the Older Americans Act (OAA) and all applicable regulations, policies and procedures established by the Texas Department on Aging and Disabilities (DADS), the Administration on Aging (AoA), the Secretary of Health and Human Services, and the U.S. Department of Agriculture.
- 5.4 The Vendor shall adhere to AACOG policies and procedures, as they now exist or as they may subsequently be adopted, in all respects. A copy of said policies and procedures are attached hereto and incorporated herein as **Attachment IV**. Vendor shall also adhere to Texas Administrative Code Title 40, Part I, Chapter 84, Rule 84.5, Nutrition Service Requirements, attached hereto and incorporated herein as **Attachment V**. Vendor agrees to abide by any and all future amendments or additions to such rules, policies or procedures as they may be promulgated.
- 5.5 The Vendor providing services under this Agreement shall operate fully in conformance with all federal, state and local fire, health, safety, sanitation, and other standards prescribed in law or regulations. Such requirement shall also be passed to all sub-contractor/sub-vendors and subgrantees in the fulfillment of this Agreement. The Vendor assures that where the state or local jurisdictions require licensure for the provision of services, agencies providing such services shall be licensed.

5.6 As a party to this Contract, Contractor 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. Additionally, Vendor agrees to abide by all applicable provisions of San Antonio City Code Section 2-8, as amended. Also, Vendor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

- (a) Title VII of the Civil Rights Act of 1964, as amended;
- (b) Section 504 of the Rehabilitation Act of 1973, as amended;
- (c) The Age Discrimination Act of 1975, as amended;
- (d) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
- (e) Fair Labor Standards Act of 1938, as amended;
- (f) Equal Pay Act of 1963, P.L. 88-38; and
- (g) All applicable regulations implementing the above laws.

Vendor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.

5.6.1 The Vendor agrees not to hire or use in any capacity including as a volunteer any person that the Vendor receives notice from the City is ineligible to participate as an employee, volunteer or any other capacity in connection with the delivery of services under this Agreement.

5.7 The Vendor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the Vendor to suspension of payments, termination of Agreement, and debarment and suspension actions.

5.8 Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

5.9 It is expressly understood and agreed by the City and Vendor that the City's obligations under this Agreement are contingent upon the actual receipt of adequate grant funds to meet City's liabilities hereunder. In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, City, as the party ultimately responsible for all matters of compliance with Alamo Area Council of Governments and/or City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

5.10 Vendor agrees to comply with the following Small, Minority or Woman-owned Business Advocacy Policies:

- (a) Vendor is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Vendor agrees to submit in writing to the City no later than six (6) months from the date of execution of this contract its policies regarding small, minority, or women-owned business policy regarding procurement, construction and professional service contracts. Vendor further agrees that Vendor will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small Business Economic Development Advocacy Policy and City's

Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development, and the City Clerk's Office.

- (b) The Vendor agrees to submit to the City a List of Subcontractors/Suppliers Form (the "List") for contracts between \$25,000 to \$200,000 or for contracts over \$200,000, a Good Faith Effort Plan ("GFEP"), either of which indicates Vendor's utilization of Small, Minority and Woman-owned Business. If City approves the List or GFEP, and the City subsequently finds material deficiencies in any aspect of the List or GFEP, Vendor will be required to submit a written report to City's Department of Economic Development, including a Supplemental List or Good Faith Effort Plan indicating efforts to resolve any deficiencies. A denied Supplemental List or Good Faith Effort Plan, by the City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by the Vendor. Failure to obtain an approved List or Supplemental Good Faith Effort Plan, within ninety (90) days of initial denial shall constitute a default and result in \$1,000.00 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the amount of liquidated damages is initially assessed constitute a further (additional) condition of default by the Vendor and which can, at the option of the Director of the Managing City Department, result in forfeiture of the entirety of this Contract.
- (c) The Vendor shall submit to the City no later than six (6) months from the date of execution of this contract a report indicating the utilization of small, minority and women-owned businesses within its agency to the Managing City Department and the Department of Economic Development.

5.11 Additionally, Vendor shall comply with the following:

- (a) Local Government Records Act of 1989 and the official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
- (b) Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

Vendor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.

5.12 The Vendor warrants that any and all taxes that the Vendor may be obligated for, including but not limited to, federal, state, and local taxes, fees, special assessments, federal and state payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Agreement. The Vendor shall comply with all applicable local, state, and federal laws including, but not limited to:

- (a) worker's compensation;
- (b) unemployment insurance;
- (c) timely deposits of payroll deductions;
- (d) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
- (e) Occupational Safety and Health Act regulations; and
- (f) Employee Retirement Income Security Act of 1974, P.L. 93-406.

Vendor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.

- 5.13 Vendor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

VI. Reporting Requirements

- 6.1 The Department of Human Services is assigned monitoring, fiscal control, and evaluation of certain projects, including the Project covered by this Agreement. Therefore, at such times and in such form as may be required by the Department of Human Services, the Vendor shall furnish to the Department of Human Services and AACOG, the Grantor of the grant funds, if applicable, such statements, records, data, and information and permit the City and the Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. Failure to comply with these requirements shall constitute a breach of agreement; issuance of payments may be discontinued by the City and legal remedy for the loss taken by the City.
- 6.2 The Vendor shall submit to the Department of Human Services such reports as may be required by AACOG and/or City.
- 6.3 Vendor agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Vendor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Vendor shall give the Director of the Department of Human Services prior written notice that such disclosure is required with a full and complete description regarding such requirement. Vendor shall establish specific procedures designed to meet the obligations of this Article VI, Section 6.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Vendor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VI, Section 6.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Agreement. Upon termination of this Agreement, Vendor shall return to City all copies of materials related to the Project/Projects, including the Confidential Information.
- 6.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Vendor receives inquiries regarding documents within its possession pursuant to this Agreement, Vendor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the Vendor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Vendor's receipt of such request.
- 6.5 In accordance with Texas law, Vendor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Vendor agrees that no such local government records produced by or on the behalf of Vendor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Vendor.
- 6.6 Vendor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City and shall be made available to the City at any time. Vendor further agrees to turn over to City all such records upon termination of this Agreement. Vendor agrees that it shall not, under any circumstances, release any records created

during the course of performance of the Agreement to any entity without the written permission of the Director of the Department of Human Services, unless required to do so by a court of competent jurisdiction. The Department of Human Services shall be notified of such request as set forth in Article XIV, Section 14.1 of this Agreement.

- 6.7 AACOG may monitor and evaluate the entire Project for compliance with state and federal guidelines and render technical assistance and Vendor agrees to submit to such monitoring and evaluation.
- 6.8 The Vendor shall give the City, AACOG, Administration on Aging (AoA), the U.S. Department of Agriculture (USDA), the Comptroller General of the United States, and the state of Texas, through any authorized representative, access to and right to examine all facilities, equipment, operations, records, books, papers, agreements, or other documents related to this Agreement. Such right of access shall continue as long as such records, or any of them, are in existence, but shall not be less than five (5) years following the end of this Agreement term. Vendor shall include the substance of this provision in all subcontracts.

VII. Termination

- 7.1 Termination for Convenience - This Agreement may be terminated in whole or in part when the City determines that continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the date on which notice is sent. The Vendor shall also have the right to terminate this Agreement and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The Vendor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Vendor's performance upon which final payment is conditioned shall include, but not be limited to, the Vendor's complete and satisfactory performance of its obligations for which final payment is sought.
- 7.2 Termination for Cause - Should the Vendor fail to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if this Vendor should violate any of the covenants, conditions or stipulations of the Agreement, the City shall thereupon have the right to terminate this Agreement by sending written notice to the Vendor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). The Vendor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Vendor's performance upon which final payment is conditioned shall include, but not be limited to, the Vendor's complete and satisfactory performance, of its obligations for which final payment is sought.
- 7.3 Notwithstanding the provisions of Section 7.2 of this Agreement, in the event that monitoring/evaluation activities by the City, AACOG, Bexar Area Agency on Aging or its agents, disclose serious deficiencies in the operation of Vendor or its sub-contractor/sub-vendors supported under provision of this Agreement, the City may elect to terminate this Agreement upon ten (10) days written notice from the City to the Vendor.

[The following section may be revised as necessary:]

- 7.4 Notwithstanding the provisions set forth in section 7.1, 7.2, and 7.3 of this Agreement, should the Vendor not adequately repair or maintain the premises, to include but not be limited to: the parking lot, roof, foundation, floors, HVAC system, electrical systems, plumbing, the structural soundness of all buildings, and any other premises defect or deficiency affecting the health or safety of seniors and Project visitors, the City may elect to terminate this Agreement upon ten (10) days written notice from the City to the Vendor.
- 7.5 Notwithstanding the provisions of any other section in this Article, the Vendor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold funds otherwise due as damages.

- 7.6 In the event of termination, final billings for units of services delivered pursuant to the Agreement will be submitted by the Vendor to the City of San Antonio within ten (10) calendar days from the date of termination. Vendor understands that no units of services delivered after the termination date will be reimbursed.
- 7.7 Vendor agrees and understands that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources, including AACOG grant agreement funds, but if the parties execute an agreement covering a multi-year period, then all obligations of City are subject to annual appropriation by the City Council in future years after the first year of the Agreement. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Agreement, which results in the unavailability of funds, City may terminate this Agreement and neither Vendor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Agreement.
- 7.8 In the event that this Agreement is terminated, as provided above, the City or AACOG may require the Vendor to transfer title and deliver to the City or AACOG or to another authorized vendor, any property acquired by federal or state funds or assigned to the Vendor by the AACOG for the purpose of this Agreement.

VIII. Insurance

- 8.1 Vendor agrees to comply with the following insurance provisions:
- (a) Vendor shall be responsible for insuring its employees and sub-recipients for Worker's Compensation or Alternative Plan. In no event will the City be required to maintain any insurance coverage for Vendor. If a Worker's Compensation Policy is maintained, a copy of their insurance certificate shall be provided to City of San Antonio, Dept. of Human Services.
 - (b) Vendor shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the City be required to maintain any insurance coverage for Vendor. In the event that Property, Autos, and Legal Liability (Commercial General Liability) policies are maintained, a copy of their insurance certificate and additional insured endorsement shall be provided to City of San Antonio, Dept. of Human Services.

[Language in the following article may be modified if the volunteer is a political subdivision.]

IX. Indemnity

- 9.1 VENDOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

VENDOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this AGREEMENT, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, 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 VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPROTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR'S activities under this AGREEMENT.

X. Legal Requirements

- 10.1 The Vendor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant, the City shall have the right to terminate this Agreement without liability or, at its discretion, to deduct from the Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 10.2 No elected official, director, officer, agent or employee of City or Vendor shall be charged personally or held contractually liable by or to City or Vendor under any term or provision of this Agreement, or because of any breach thereof, or because of execution, approval, or attempted execution of this Agreement.

XI. Amendments

- 11.1 Except when the terms of this Agreement expressly provide otherwise, any alterations additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Vendor without the necessity of seeking approval from City Council so long as the amendment is approved as to form by the City Attorney or his designee.

XII. Subcontracting and Assignment

- 12.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written consent of the City's Director of the Department of Human Services.

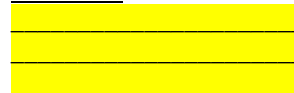
XIII. Independent Contractor

- 13.1 In performance of obligations under this Agreement, the Vendor shall act as an independent contractor and not as an agent, representative or employee of the City of San Antonio. No employee, agent, or representative of the Vendor shall be considered an employee of the City nor be eligible for any benefits, rights or privileges afforded to City employees.

XIV. Communication

- 14.1 For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY
 Director
 Department of Human Services
 106 S. St. Mary's Street, 7th Floor
 San Antonio, Texas 78205

VENDOR


Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

XV. Venue

- 15.1 Vendor and City agree that this Agreement shall be governed by and construed in accordance with the laws of the state of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XVI. Gender

- 16.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVII. Licensing/Training

- 17.1 Vendor warrants and certifies that Vendor 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.
- 17.2 Vendor shall ensure that the Center Manager is Food Manager Certified, as required under state and local law, within 90 days of hire, and that staff maintain certification.
- 17.3 The Vendor shall furnish all necessary personnel with professional classification, qualifications, skill and expertise required to perform the services to be rendered and the responsibilities accepted pursuant to the activities conducted under this Agreement. The Vendor shall be responsible for completion of the services to be rendered in accordance with published service standards. The Vendor will provide all necessary supervision and coordination of activities that may be required to complete the services and fulfill all contractual obligations.

XVIII. Obligations

- 18.1 The Project Office staff will provide monitoring, technical assistance, training, planning and evaluation with the Vendor and center personnel for the services specified in this Agreement as required by the Texas Department on Aging and Disability Services (DADS) guidelines and the Project Office.
- 18.2 Vendor will refer all individuals requesting services to the Project Office for eligibility determination.

XIX. Authority to Contract

- 19.1 The signer of this Agreement for City and Vendor each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Vendor respectively, and to bind City and Vendor to all of the terms, conditions, provisions and obligations herein contained.

XX. Emergency Management

- 20.1 In the event of a disaster, whether man-made, natural, or of a civil defense nature, the Vendor will provide and/or coordinate appropriate resources to federal, state, or local disaster relief and may provide equipment and resources for the following activities: temporary shelter; nutrition services; food preparation; transportation; and volunteers.

XXI. Entire Agreement

- 21.1 This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersedes all prior negotiations, representations, or agreements, either oral or written.

21.2 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 City, 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 this 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.

XXII. Acceptance of Agreement

22.1 I the undersigned, certify that I have read and understand the terms of this Agreement and that the entity for which I execute this Agreement will abide by them. I further certify that I am authorized to sign for this Vendor.

This Agreement is effective as of the term stated herein, and has been executed as of the date of last party to sign below, the ___ day of _____, _____.

CITY OF SAN ANTONIO:

VENDOR:

[Enter Vendor's Legal Name]

Melody Woosley, Director
Department of Human Services

Authorized Signature

Date

Date

APPROVED AS TO FORM:

Printed Name/Title

Assistant City Attorney

ATTACHMENTS

[Attachments may be revised as necessary, depending on the nutrition site]

- Attachment I – Senior Nutrition Program (SNP) Operations Manual
- Attachment II – Scope of Work
- Attachment III – Cash Handling Procedures
- Attachment IV – AACOG Policies & Procedures
- Attachment V – Texas Administrative Code Nutrition Services Requirements
- Attachment VI – Project Roster Due Dates Schedule
- Attachment VII – HIPAA Business Associate Agreement

STATE OF TEXAS

Contract # _____

**SENIOR NUTRITION PROGRAM
VOLUNTEER SITE [or SITE-LEASE] AGREEMENT
WITH**

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as “City”), a Texas Municipal Corporation, acting by and through its Director (“hereinafter referred to as “Director”) of the Department of Human Services pursuant to Ordinance No. _____, passed and approved on _____, and _____ (hereinafter referred to as “Volunteer”) located at _____, a nutrition center site (“Center”).

WITNESSETH:

WHEREAS, the Alamo Area Council of Governments, hereinafter referred to as “AACOG,” grants funds to the City, which funds are supplemented by the City through its General Fund, for senior nutrition services to be provided through the Senior Nutrition Program (“the Project”); and

WHEREAS, the City has adopted a budget for expenditure of the grant funds and General Fund dollars, and included therein is an allocation of funds for the Project; and

WHEREAS, the City’s Department of Human Services is designated as the representative agency of San Antonio and Bexar County for administration of the Project; and

WHEREAS, the Department of Human Services, Senior Services Division, hereinafter referred to as “the Project Office,” is responsible for day-to-day administration of the Project; and

WHEREAS, the City wishes to engage the Volunteer to carry out the Project at _____, a nutrition center site (the “Center”); NOW THEREFORE:

The parties hereto agree as follows:

I. Consideration

1.1 The Volunteer shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Scope of Work / Project Requirements set forth in Article IV of this Agreement at the Center.

[The following section may be revised as appropriate:]

1.2 **[For Site Agreements:]**

In consideration, the City shall provide at no cost to the Volunteer, meals for consumption by the Center members ages 60 and older.

[For Site-Lease Agreements:]

In consideration, the City shall provide at no cost to the Volunteer, meals for consumption by the Center members ages 60 and older. As additional consideration, City shall pay an annual fee of \$ _____ to Volunteer for costs associated with site use from Monday through Friday.

1.3 Volunteer shall refer all individuals requesting services to the City’s Department of Human Services, Senior Services Division’s Community Services Supervisor for eligibility determination.

- 1.4 City shall provide monitoring, technical assistance, training, planning and evaluation services of the Project to the Volunteer as required by the Texas Department on Aging and Disability Services (DADS) guidelines and the City's Department of Human Services, Senior Services Division.

II. Agreement Period

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on , 2014 and shall remain in effect for an initial term of one (1) year, and will be automatically renewed thereafter so long as funds are available, unless amended or terminated pursuant to the terms of this Agreement. This agreement terminates and supersedes all prior agreements between City and Volunteer for the provision of senior nutrition services.

III. Collection of Meal Fees and Donations for Meals

- 3.1 The Volunteer shall provide a voluntary opportunity for eligible Project recipients to contribute to the cost of Project services while protecting the individual's privacy. The Volunteer shall safeguard and account for such contributions as program income in accordance with City's Senior Nutrition Program (SNP) Operations Manual, which is attached hereto and incorporated herein as **Attachment I**.
- 3.2 The Volunteer shall allow the City to post a sign at the Center, which identifies the full cost of the services, the suggested eligible Project recipient contribution, and a statement that services shall not be denied because the eligible Project recipients cannot or will not contribute.
- 3.3 The Volunteer shall ensure that a meal fee to recover the full cost of the meal provided at the Center is collected from all persons who are not eligible for services, in accordance with or otherwise provided for in the City's SNP Operations Manual in **Attachment I**. Meals may be provided to guests of the eligible Project recipients and others who are not eligible if the provision of this meal does not deprive an eligible Project recipient of a meal.
- 3.4 Volunteer shall account for and report to the City funds received by Volunteer from eligible Project recipients, guests of eligible Project recipients, and visitors to the Center, as prescribed in the SNP Operations Manual in **Attachment I**.
- 3.5 All meal fees and donations collected by Volunteer during the grant period shall be forwarded to the City monthly on dates specified by the City's Department of Human Services' Senior Services Division. Volunteer shall comply with the provisions of the Department of Human Services Cash Handling Procedures, attached hereto and incorporated herein for all purposes as **Attachment III**.

IV. Scope of Work / Project Requirements

- 4.1 City may enforce, or waive enforcement of any of, the terms of this Agreement without prejudice to any rights or remedies (whether set forth in this Agreement or provided for by law or in equity) which might otherwise be available to the City.
- 4.2 Volunteer will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Scope of Work affixed hereto and incorporated herein for all purposes as **Attachment II**, and for each site listed on **Attachment VI**, if Volunteer has multiple nutrition center sites..

V. Applicable Laws and Regulations

- 5.1 Volunteer shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City and Bexar County in its performance of all of the work under this Agreement.

- 5.2 Volunteer agrees to administer the Project in accordance with the Older Americans Act (OAA) and all applicable regulations, policies and procedures established by the Texas Department of Aging and Disability Services (DADS), the Administration on Aging (AoA), the Secretary of Health and Human Services, and the U.S. Department of Agriculture.
- 5.3 Volunteer shall adhere to the Alamo Area Council of Governments (AACOG) policies and procedures, as they now exist or as they may subsequently be adopted, in all respects. Said policies and procedures are set forth in the City's SNP Operations Manual in **Attachment I**. Volunteer shall also adhere to Texas Administrative Code Title 40, Part IX, Subsection 270.5 Nutrition Service Requirements. Said requirements are also set forth in the City's SNP Operations Manual.
- 5.4 Volunteer agrees not to use in any capacity including as a volunteer any person that the Volunteer receives notice from the City is ineligible to participate as an employee, volunteer or in any other capacity in connection with the delivery of services under this Agreement.
- 5.5 Volunteer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.
- 5.6 As a party to this Agreement, Volunteer 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. Additionally, Vendor agrees to abide by all applicable provisions of San Antonio City Code Section 2-8, as amended.
- 5.7 Vendor agrees to abide by any and all future amendments or additions to such above-referenced laws, rules, regulations, policies and procedures as they may be promulgated agrees to abide by any and all future amendments or additions to the above-stated laws, rules, regulations, policies and procedures as they may be promulgated.

VI. Reporting Requirements

- 6.1 The Department of Human Services is assigned monitoring, fiscal control, and evaluation of certain projects, including the Project covered by this Agreement. Therefore, at such times and in such form as may be required by the Department of Human Services, the Volunteer shall furnish to the Department of Human Services and AACOG, the Grantor of the grant funds, if applicable, such statements, records, data, and information and permit the City and the Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. Failure to comply with these requirements shall constitute a breach of this Agreement, and may result in the termination of this Agreement.
- 6.2 Volunteer shall submit to the Department of Human Services such reports as may be required by AACOG and/or City.
- 6.3 AACOG may monitor and evaluate the entire Project for compliance with state and federal guidelines and render technical assistance and Volunteer agrees to submit to such monitoring and evaluation.
- 6.4 Volunteer shall give the City, AACOG, Administration on Aging (AoA), the U.S. Department of Agriculture (USDA), the Comptroller General of the United States, and the State of Texas, through any authorized representative, access to and right to examine all facilities, equipment, operations, records, books, papers, agreements, or other documents related to this Agreement. Such right of access shall continue as long as such records, or any of them, are in existence, but shall not be less than five (5) years following the end of this Agreement term.

VII. Termination

- 7.1 Termination for Convenience - This Agreement may be terminated in whole or in part by either party with thirty (30) days notice to the other party.
- 7.2 Termination for Cause - Should the Volunteer fail to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if Volunteer should violate any of the covenants, conditions or stipulations of the Agreement, the City shall thereupon have the right to terminate this Agreement by sending written notice to the Volunteer of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent).
- 7.3 Notwithstanding the provisions of Section 7.2 of this Agreement, in the event that monitoring/evaluation activities by the City, ACOG Bexar Area Agency on Aging or its agents, disclose serious deficiencies in the operation of the Center by Volunteer, the City may elect to terminate this Agreement upon ten (10) days written notice from the City to the Volunteer.

[The following section may be deleted where not applicable]

- 7.4 Notwithstanding the provisions of any other section in this Article, should the Volunteer not adequately repair or maintain the premises to the satisfaction of the City, to include but not be limited to the parking lot, roof, foundation, floors, HVAC system, electrical systems, plumbing, the structural soundness of all buildings, and any other premises defect or deficiency affecting the health and safety of seniors and Project visitors, the City may elect to terminate this Agreement upon ten (10) days written notice from the City to the Volunteer.

VIII. Insurance

- 8.1 Volunteer agrees to comply with the following insurance provisions:
- (a) Volunteer shall be responsible for insuring its employees and sub-recipients for Worker's Compensation or Alternative Plan. In no event will the City be required to maintain any insurance coverage for Volunteer. If a Worker's Compensation Policy is maintained, a copy of their insurance certificate shall be provided to City of San Antonio, Dept. of Human Services.
 - (b) Volunteer shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the City be required to maintain any insurance coverage for Volunteer. In the event that Property, Autos, and Legal Liability (Commercial General Liability) policies are maintained, a copy of their insurance certificate and additional insured endorsement shall be provided to City of San Antonio, Dept. of Human Services.

[Language in the following article may be modified if the volunteer is a political subdivision.]

IX. Indemnity

9.1 VOLUNTEER AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

- (a) **Volunteer covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually or collectively, directly or indirectly arising out of, resulting from or related to Volunteer's activities under this Agreement, including any acts or omissions of Volunteer, any agent, officer, director, representative, employee, consultant or sub-contractor/sub-volunteer of Volunteer, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement, all without however, waiving any governmental immunity available to the CITY under**

Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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. Volunteer shall promptly advise the City in writing of any claim or demand against the CITY or Volunteer known to Volunteer related to or arising out of Volunteer's activities under this Agreement and shall see to the investigation of and defense of such claim or demand at Volunteer's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Volunteer of any of its obligations under this paragraph.

- (b) **It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this Section, is an INDEMNITY extended by Volunteer to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. VOLUNTEER further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

X. Amendments

- 10.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Volunteer without the necessity of seeking approval from City Council so long as the amendment is approved as to form by the City Attorney or his designee.

XI. Subcontracting and Assignment

- 11.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written consent of the City's Director of the Department of Human Services.
- 11.2 Volunteer shall not assign or transfer Volunteer's interest in this Agreement without the written consent of the Director of the Department of Human Services. Any attempt at transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.

XII. Independent Contractor

- 12.1 In performance of obligations under this Agreement, the Volunteer shall act as an independent contractor and not as an agent, representative or employee of the City of San Antonio. No employee, agent, or representative of the Volunteer shall be considered an employee of the City nor be eligible for any benefits, rights or privileges afforded to the City employees.
- 12.2 The City shall not be obligated to any third parties (including any sub-contractor/sub-volunteer of the Volunteer).

XIII. Communication

13.1 For purposes of this agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

VOLUNTEER

Social Services Manager

[Redacted]

Senior Nutrition Program

[Redacted]

Senior Services Division

[Redacted]

106 S. St. Mary's Street, 7th Floor

San Antonio, Texas 78205

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

XIV. Venue

14.1 Volunteer and City agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XV. Gender

15.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVI. Authority to Contract

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

XVII. Entire Agreement

17.1 This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersedes all prior negotiations, representations, or agreements, either oral or written.

17.2 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 City, 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 this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. Acceptance of Agreement

18.1 I the undersigned, certify that I have read and understand the terms of this Agreement and that the Volunteer will abide by them. I further certify that I am authorized to sign for this Volunteer, the contracting entity.

This Agreement is effective as of the term stated herein, and has been executed as of the date of last party to sign below, the ___ day of _____, _____.

CITY OF SAN ANTONIO:

VOLUNTEER:

[Enter Volunteer's legal name]

Melody Woosley, Director
Department of Human Services

Authorized Signature

Date

Date

APPROVED AS TO FORM:

Printed Name/Title

Assistant City Attorney

ATTACHMENTS

[Attachments may be revised as necessary, depending on the nutrition site]

- Attachment I – Senior Nutrition Program (SNP) Operations Manual
- Attachment II – Scope of Work
- Attachment III – Cash Handling Procedures
- Attachment IV – AACOG Policies and Procedures
- Attachment V – Texas Administrative Code Nutrition Services Requirements
- Attachment VI – List of Nutrition Centers, if applicable
- Attachment VII – HIPAA Business Associate Agreement

**City of San Antonio
PROFESSIONAL SERVICES CONTRACT
COSA Operations FY2015
Solar San Antonio, Inc.**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as “CITY”), a Texas municipal corporation, acting by and through its City Manager as authorized by City Council on September 18, 2014 pursuant to Ordinance No. 2014-09-18-_____, and Solar San Antonio, Inc., a Texas non-profit corporation, by and through its Chairman, W. Laurence Doxsey, (hereinafter referred to as “CONSULTANT”), both of which may be collectively referred to as the “Parties”.

WHEREAS, the CITY has negotiated with the CONSULTANT to provide consulting services (hereinafter referred to as "the Project"); and

ACCORDINGLY, the parties agree to the mutual obligations herein contained and to the performance and accomplishments of the tasks hereinafter described.

I. TERM

1.1 This CONTRACT shall commence on October 1, 2014, and shall terminate on September 30, 2015 unless earlier termination or extension shall occur pursuant to any provision hereof.

II. CONTRACT PRICING AND BILLING

2.1 The total of all payments and obligations made and incurred by CITY under this CONTRACT, in consideration for Consultant’s performance of services under this CONTRACT, shall not exceed the total amount of sixty thousand dollars (\$60,000.00).

2.2 Unless otherwise provided for in the Solar San Antonio “City of San Antonio Operations Contract Proposed Scope of Services FY 2014-2015”, attached hereto and incorporated herein as **Exhibit A**, an initial invoice, based on the payment terms set forth in Section 2.1 of this CONTRACT and consistent with the number of hours actually worked by CONSULTANT, will be billed to the CITY thirty (30) days after the execution date of the CONTRACT and, after initial billing, invoices consistent with the above will be submitted every thirty (30) days thereafter until the completion of the CONTRACT. The information contained in such invoices shall be in such detail as may be required by CITY. CITY shall pay CONSULTANT upon the delivery by CONSULTANT to CITY of an invoice and the approval of said invoice by the Director of the Office of Sustainability. Upon approval of the invoice by CITY, CITY shall pay CONSULTANT no later than thirty (30) days after the date of such approval; provided, however, that such approval shall be based upon satisfactory

completion of the work described in Exhibit A. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.

- 2.3 Final Payment due under the CONTRACT will not be paid until the all work, reports, data, documents and any other unfinished services necessary to complete performance under the CONTRACT have been received, performed and are approved by the CITY, as meeting all the tasks required hereunder in Section 3.1. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.
- 2.4 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.5 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the CONTRACT referenced in Section 2.1 of the CONTRACT.

III. SCOPE OF SERVICES

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the “Solar San Antonio City of San Antonio Operations Contract Proposed Scope of Services FY 2014-2015”, attached hereto as Exhibit A. Goals, objectives and performance standards for the Project will be established by the CITY’S Office of Sustainability and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Exhibit A is fully incorporated herein verbatim for all purposes, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONSULTANT.

IV. TERMINATION

- 4.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 **TERMINATION WITHOUT CAUSE:** The CONTRACT may be canceled by either party upon thirty (30) calendar days written notice, evidenced by a U. S. Postal Mail Return Receipt Requested for certified delivery, or an affidavit of personal delivery, provided such notice specifies an effective date of termination, which termination date shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is actually received by the other party or the certified mail receipt evidences delivery. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party or evidence of certified mailing as described above. All files are the property of the CITY and, at the CITY’S request, will be delivered at no cost to the CITY or its designated recipient at the effective

date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.

- 4.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 4.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 4.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that through action or no action initiated by the CITY of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of a CONTRACT and has no funds to do so from other sources, the CONTRACT may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.
- 4.9. Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 6.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 6.4 If the CONSULTANT receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

- 7.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 7.3 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term “*local government record*” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.4 The intellectual work products, if any that result from this Contract shall be owned by the CITY, and as such are public property.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT 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 the CITY.
- 8.2 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, CONSULTANT will immediately:
- 8.2.1 Either:
- a) obtain, at CONSULTANT 's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
 - b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

(c) reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

8.2.2 CONSULTANT further agrees to:

- a) 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 CONTRACT,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided :

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONSULTANT 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,
- that the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provides CONSULTANT with written notice within **15** days following the formal assertion of any claim with respect to which the CITY asserts that CONSULTANT assumes responsibility under this section.

IX. RECORDS RETENTION

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.
- 9.2 CONSULTANT shall deliver all documents to the CITY, upon termination of the CONTRACT, in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 9.3 The CONSULTANT shall retain all records owned by or to which the CITY has the legal right of access to satisfy the City's obligations for a retention period required by the Texas

Local Government Records Act, being five years from date of contract termination, and in the event of litigation or claims, whatever additional time is necessary to resolve all litigation or claims.

- 9.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such open records requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at the City's Office of Sustainability, 1400 S. Flores, San Antonio, Texas, or successor local address, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

- 11.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and meets all competence standards applicable to the services provided herein.

XII. CONFLICT OF INTEREST AND ETHICS

- 12.1 CONSULTANT acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any CONTRACT with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a CONTRACT with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the CONTRACT or sale: a CITY officer or employee; his 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.
- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

12.3 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

12.4 Additional Ethics Form Filing: Texas Local Government Code. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. CONSULTANT must confer with its own legal advisor if you have questions regarding the statute or form.

XIII. INSURANCE

- 13.1 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this Contract.
- 13.2 Within ten (10) working days following execution of this Contract, CONSULTANT shall obtain a fidelity bond covering all persons handling funds received or disbursed hereunder and/or signing or co-signing checks for said fund disbursement. CONSULTANT's fidelity bond shall be in an amount of Sixty Thousand dollars (\$60,000.00), and evidence of same shall be filed with CITY prior to any disbursement of funds hereunder but no later than ten (10) working days following execution of this Contract. CONSULTANT shall ensure that such bond shall contain a provision that cancellation or expiration notice is sent to CITY at least sixty (60) days prior to the effective date of such cancellation or expiration.
- 13.3 Prior to the commencement of any work under this Contract, CONSULTANT shall furnish a completed Certificate of Insurance to CITY's Office of Sustainability Director, and City Clerk's Office. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which certificate shall furnish and contain all required information referenced or indicated thereon. **THE CERTIFICATE MUST IDENTIFY THE PROJECT CONTRACT BY NAME, Solar San Antonio "City of**

San Antonio Operations Contract Proposed Scope of Services FY2014-2015” CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City’s Office of Sustainability Director, and no officer or employee shall have authority to waive this requirement.

- 13.4 CITY reserves the right to review the insurance requirements of this Contract during the effective period of this Contract and any extension or renewal hereof, if any, and to require modification of insurance coverage and its limits when deemed necessary and prudent by the City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.
- 13.5 CONSULTANT’s financial integrity is of interest to CITY, therefore, subject to CONSULTANT’s right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at CONSULTANT’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
(A) Worker's Compensation, and Employer's Liability, if applicable	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Commercial General (Public) Liability-to include but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000 or its equivalent in umbrella or excess liability coverage
(1) Premises/Operations	
(2) Independent Contractor's Liability	
(3) Products and Completed Operations	
(4) Personal Injury	
(5) Contractual Liability	

- 13.6 MATERIAL REQUIREMENTS: CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. All of CONSULTANT’s insurance requirements under this Contract are material obligations.
- 13.7 CONSULTANT agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance shall contain the following required provisions.

- Name CITY and its officers, employees, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under Contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy (if applicable) shall provide a waiver of subrogation in favor of CITY.

13.8 CONSULTANT shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

**City of San Antonio
Office of Sustainability
P.O. Box 839966
San Antonio, Texas 78283-3966**

13.9 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, CITY shall have the right to terminate the Contract, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subconsultants' performance of the work covered under this Contract.

XIV. INDEMNITY

14.1 Consultant 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 and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this CONTRACT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

XV. AMENDMENT

15.1 This Contract, together with its authorizing ordinance and Exhibit A, shall constitute the full and final agreement between the parties hereto.

15.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof. Material amendments that adjust compensation or performance periods must be approved by the City Council.

15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without

written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
 Attn: Director
 Office of Sustainability
 P.O. Box 839966
 San Antonio, Texas 78283-3966

CONSULTANT

Solar San Antonio
 Attn: W. Laurence Doxsey, Chairman
 118 Broadway, Suite 621
 San Antonio, Texas 78205

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 Any subcontracts or assignments of interests entered into by CONSULTANT concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT's effective date. CONSULTANT shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should CONSULTANT assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.

- 18.2 CONSULTANT's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any CONTRACT with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all Contracts with approved subcontractors.
- 18.3 CONSULTANT agrees to notify CITY of any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the CITY.
- 18.4 In no event shall such written consent, if obtained, relieve CONSULTANT from any and all obligations hereunder or change the terms of this CONTRACT.
- 18.5 CITY must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIX. SUCCESSORS AND ASSIGNS

- 19.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

XX. NONWAIVER OF PERFORMANCE

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the CONSULTANT from any covenants and conditions required in this CONTRACT.
- 20.2 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or

remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. COMPLIANCE

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing foregoing laws.

Non-Discrimination. As a party to this contract, CONSULTANT 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.

XXII. VENUE AND GOVERNING LAW

- 22.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXIII. SEVERABILITY

23.1 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.

XXIV. GENDER

24.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

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

XXVI. ENTIRE AGREEMENT

26.1 This CONTRACT, together with its authorizing ordinance and Exhibit A, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

EXECUTED this the _____ day of September, 2014.

CITY

City of San Antonio, Texas

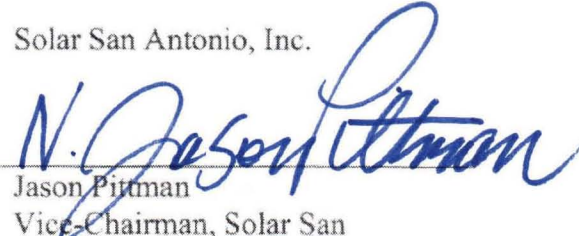
Edward Benavides, Chief of Staff
Office of the City Manager

APPROVED AS TO FORM:
Robert F. Greenblum
City Attorney

By: Assistant City Attorney

CONSULTANT

Solar San Antonio, Inc.



Jason Pittman
Vice-Chairman, Solar San
Antonio, Inc.

Exhibit A

**Solar San Antonio
City of San Antonio Operations Contract
Proposed Scope of Services
FY 2014-2015**

1. Provide advice and research on renewable energy to City Council, City staff, and CPS Energy; explore integration of distributed solar into utility portfolio in manner acceptable to City Council, CPSE, solar industry, and ratepayers
Budget: \$3,000
2. Solar Roundtables
Budget: \$3,000
3. Build Support for the Distributed Solar Industry
Budget: \$54,000

Task 1: Provide advice and research to City government officials and CPS Energy staff.

Solar San Antonio will continue to provide advice and research related to renewable energy on an as-available and as-needed basis. The goal will be to report on developments in the renewables field, discuss potential cooperative endeavors, and resolve solar-related issues that arise. The goal will also be to work closely with the City and CPS Energy to facilitate smooth implementation of solar capacity expansion. A major focus will be on the completion of a plan for the integration of distributed solar into the utility portfolio in a manner that does not seriously impact the utility's revenue requirements.

These activities will be documented in the progress reports.

Annual Performance Measures:

- Develop and obtain City of San Antonio and CPS Energy consensus on the contents of a plan to advance integration of distributed solar energy into the utility portfolio. Provide documentation of process and results. Provide recommendations to CoSA on best practices and recommended next steps.

Task 2: Solar Roundtables

Solar San Antonio will continue to host meetings that join representatives from the solar industry, the City of San Antonio, CPS Energy representatives, and other stakeholders to discuss issues and resolutions regarding any barriers to expanding solar capacity in San Antonio. In addition, information will be offered to increase professionalism within the solar industry.

These activities will be documented in the progress reports.

Annual Performance Measures:

- Host a minimum of 4 meetings, roundtables and provide report of findings.

Task 3: Build support for distributed solar

Solar San Antonio will do research and analysis to develop materials for local decision makers and the general community on the benefits of supporting the expansion of distributed solar installations. Solar San Antonio will gather ideas, information, and analysis from around the country to supplement the local work on policy development. Solar San Antonio will maintain and update its websites to provide public access to information and news about renewable energy and how to go solar. Solar San Antonio will send out a monthly newsletter with insights into the solar industry from around the nation and the world. Solar San Antonio will continue to expand its Bring Solar Home Campaign.

The elements of further implementation will be to:

- Develop new solar opportunities, such as community solar projects and low-income access to solar.
- Encourage CPS Energy to become more directly involved in the distributed generation industry through such mechanisms as solar leasing and community solar projects.
- EcoFest – Develop a new festival to include a broad range of energy efficiency and renewable energy presentations and opportunities for public education.
- Have a membership drive to create a foundation of regular donors to Solar San Antonio
- Involve lending institutions more directly in the Bring Solar Home Campaign by providing model posters and other educational displays that can be placed at the lending institutions offering solar loans
- Put on a film series to educate the public about renewable energy as well as other environmental issues
- Promote the marketing campaign through media, social media, and other outlets. As funding permits, different aspects of the marketing campaign will be implemented through various media.
- Process responses to the marketing campaign. As responses to the marketing campaign are received, Solar San Antonio will provide the following as needed: qualify the leads, arrange energy audits, provide personal customer service, distribute leads to participating solar companies, and distribute financing opportunity leads to participating financial institutions
 - Monitor the overall experience of the respondents to marketing campaign. Solar San Antonio will maintain contact with campaign respondents as they move through the process to ensure a high quality experience and to gather suggestions that can help improve the experience.
 - Measure the marketing campaign respondent results to determine the campaign's success. Solar San Antonio will collect both quantitative and qualitative information about the overall results of the campaign to refine the campaign presentation, improve its effectiveness, and monitor the progress of solar in the city. A particular focus will be to constantly update the inventory of solar photovoltaic and solar hot water installations to

determine the actual growth of solar capacity in San Antonio. These numbers will be posted to the main website and will be regularly updated.

- Develop SolarBus SA, a mobile platform to bring solar information and opportunities out to the community. The bus will go to schools, events, parking lots, and wherever else people are gathered to provide solar education and opportunities to go solar, such as the Bring Solar Home Campaign. CoSA funds will be used for staff time to research and develop this idea, not for vehicle purchase.

Annual Performance Measures:

- Facilitate 350 homeowners through the “Bring Solar Home Program”
- Participate in five events sponsored by other organizations
- Conduct one major solar event
- Secure 40 contracts for solar installations through the “Bring Solar Home Program”
 - Facilitate more than \$1 million in new solar installations

Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Solar San Antonio

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

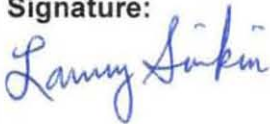
(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate [Section 2-43 of the City Code \(Ethics Code\)](#), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: <i>Executive Director</i> Company or D/B/A: <i>Solar San Antonio</i>	Date: <i>8/8/2014</i>
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



CERTIFICATE OF LIABILITY INSURANCE

SOLAR-1

OP ID: SE

Attachment 30 - FY 2015 Budget Ordinance #MM/DD/YYYY

12/18/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Walthall, Sachse & Pipes, Inc 300 E. Sonterra #1100 San Antonio, TX 78258 Debbie Brzezinski		CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:		FAX (A/C, No):	
		INSURER(S) AFFORDING COVERAGE		NAIC #	
		INSURER A : Hartford Insurance Group			
INSURED Solar San Antonio		INSURER B : Texas Mutual Ins Co			
Bill Sinkin		INSURER C : USLI			
118 Broadway, Suite 621		INSURER D : Travelers			
San Antonio, TX 78205		INSURER E :			
		INSURER F :			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			65SBMIL5605	01/08/2014	01/08/2015	EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000	
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000	
							PERSONAL & ADV INJURY \$ 1,000,000	
							GENERAL AGGREGATE \$ 2,000,000	
							PRODUCTS - COMP/OP AGG \$ 2,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC								
	AUTOMOBILE LIABILITY			65SBMIL5605	01/08/2014	01/08/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$	
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (PER ACCIDENT) \$	
							\$	
	UMBRELLA LIAB						EACH OCCURRENCE \$	
	EXCESS LIAB						AGGREGATE \$	
	DED	RETENTION \$					\$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			SBP1192631	07/09/2013	07/09/2014	WC STATUTORY LIMITS	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				OTHER	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000	
C	Directors&Officers			NDO1554532	07/18/2013	07/18/2014	D&O 1,000,000	
D	Travelers			105695814	09/30/2011	09/30/2014	Fidelity 75,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Solar San Antonio City of San Antonio Operations contract FY 2014

CERTIFICATE HOLDER

CANCELLATION

<p style="text-align: center;">CITSAPG</p> <p>City of San Antonio P. O. Box 839966 San Antonio, TX 78283-3966</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE Debbie Brzezinski</p>
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STATE OF TEXAS § AGREEMENT TO USE FUNDS OF
COUNTY OF BEXAR § THE CITY OF SAN ANTONIO

This Agreement to Use Funds (“AGREEMENT”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager or designee pursuant to Ordinance No. 2014-09-18-_____ dated September 18, 2014 and the Westside Development Corporation (the “WDC”), a Texas non-profit corporation; and collectively, the “Parties”.

WHEREAS, the City Council (the “Council”) of the CITY has recognized the community revitalization efforts and mission of WDC to serve historically underutilized areas on behalf of the City; and

WHEREAS, the *WDC Loan Program* (the “*Program*”) is one of those efforts designed to provide loans to small businesses, not-for-profit organizations, landlords, developers, property owners and other entities involved in the revitalization of the West sector of the city, and applicants must demonstrate financial need, repayment ability, credit and capacity to manage pursuant to the *Program* Guidelines and Procedures in ATTACHMENT III; and

WHEREAS, CITY wishes to engage WDC in meeting such objectives and following such procedures as described in this AGREEMENT pursuant to its mission; and

WHEREAS, CITY designates its Center City Development Office as the City Department, acting for its City Manager, responsible for the evaluation and monitoring of this AGREEMENT (hereinafter referred to as “CCDO”), and which shall work with the Department of Finance and other City departments in a supporting role; and

WHEREAS, CITY has provided certain funds from its General Fund, which have been budgeted for use by WDC to fund operations as a one-time allocation from the CITY’s adopted FY 2015 budget; and

WHEREAS, CITY also desires to grant additional funds to WDC from its Inner City Incentive Fund (the “ICIF”) for its *Program* for economic development purposes pursuant to CITY’s Economic Development Program, authorized and approved by CITY in conformance with Chapter 380 of the Texas Local Government Code; **NOW THEREFORE:**

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

I. GENERAL PROVISIONS

- 1. WDC is a non-profit corporation governed by a Board of Directors with a mission of advocating and working for the area business community toward the building and sustaining of a diverse and prosperous economy.
- 2. WDC, in furtherance of its mission, provides loans, grants and other assistance to small, diverse businesses as part of its operations.
- 3. WDC agrees by the execution of this AGREEMENT to comply with any and all provisions of this AGREEMENT and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.

4. WDC represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The signer of this AGREEMENT for WDC represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of WDC and to bind WDC to all terms, performances and provisions herein contained.
6. In the event that a dispute arises as to the legal authority of either WDC, or the person signing on behalf of WDC, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, WDC shall be liable to CITY for any money it has received from CITY for performance of any of the provisions herein.
7. WDC understands that the funds provided pursuant to this AGREEMENT are funds which have been made available by CITY's General Fund and ICIF, and WDC will therefore comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. WDC and CITY agree that WDC is an independent contractor, that WDC shall be responsible to all parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. WDC understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either Party shall have the option of terminating this AGREEMENT by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
10. WDC understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, WDC agrees that, at such time as any revisions are so made during the Term hereof, this AGREEMENT will be amended to include such revisions. In the event that WDC does not agree to any changes, WDC shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. WDC shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
11. WDC understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund and/or ICIF expenditures, agreements funded by CITY's General Fund and/or ICIF, including this AGREEMENT may, at CITY's option, be reduced in a like manner. CITY will attempt to provide WDC with as much advance notice of a potential funding reduction as is possible to allow WDC to make budget adjustments.
12. In no event shall CITY be liable for any expense of WDC not eligible or allowable hereunder.
13. Should WDC fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director of the City's CCDO, or if WDC should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to WDC of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.

- a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same, nor preclude CITY's termination right for successive breach of the same condition.
 - b. Notwithstanding the above, WDC shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this AGREEMENT at any time upon a finding by ordinance that WDC's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for WDC to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
14. Should this AGREEMENT be terminated by any Party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT, as determined solely by CITY after consultation with WDC, WDC shall refund any and all unused funds either allocated and in possession of WDC or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to WDC under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to WDC.
 15. Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall begin on October 1, 2014 and shall terminate on September 30, 2015 (the "Term"). This Agreement may be renewed annually, for up to two (2) years, subject to appropriation of funds by City Council.
 16. WDC shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent frauds and program abuse. CITY shall review, and WDC shall allow review of, WDC's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.
 17. WDC warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage or contingent fee and further, that no such understanding or agreement exists, or has existed, with any employee of WDC or CITY.
 18. WDC may leverage funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's CCDO Director.
 19. WDC is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in this AGREEMENT and **ATTACHMENTS I and II**, and has contributed to the cause of realizing such objectives.
 20. WDC acknowledges that this AGREEMENT cannot be assigned without the express written consent of CITY's CCDO Director.
 21. WDC shall not use funds from this AGREEMENT for purposes other than those listed in Section II of this Contract without prior written consent of the CITY's CCDO Director.

II. SCOPE OF SERVICES AND FUNDING

1. WDC shall utilize up to three hundred fifty eight thousand six hundred sixty eight dollars and no cents (\$358,668.00) provided by CITY from its General Fund for the funding or partial funding of WDC in performing its mission on behalf of the CITY, to be used by WDC in conformance with the approved budget in **ATTACHMENT I**. The aforementioned funds shall be paid as follows:
 - a. Up to two hundred fifty eight thousand six hundred sixty eight dollars and no cents (\$258,668.00) shall be paid from the General Fund to WDC by CITY in one installment following execution of this AGREEMENT to be utilized by WDC for operational expenses as documented in the budget in **ATTACHMENT I**.
 - b. WDC shall utilize up to one hundred thousand dollars and no cents (\$100,000.00) provided by CITY from its ICIF to WDC in one installment following execution of this AGREEMENT and a formal request for funding with an associated project list approved by the City Manager or her designee, to be utilized by WDC as documented in the budget in **ATTACHMENT I** for its *WDC Loan Program* in conformance with the Guidelines and Procedures in **ATTACHMENT II**.

2. All funds utilized shall be in compliance with the CITY's funding priorities and WDC's economic development mission articulated in its enabling Ordinance and Articles of Incorporation approved by CITY. WDC shall also fulfill the following requirements:
 - a. WDC shall provide CITY's CCDO with proper documentation verifying receipt of fiscal year 2015, 2016 and 2017 funding commitments from all other specified sources for WDC, if any.
 - b. WDC shall provide CITY's CCDO with quarterly budget reports outlining contributions and expenditures (to include all sources of funding).
 - c. WDC shall submit all required and requested documents to CITY's CCDO for proper review of WDC expenditures and activities. Any requests for Fiscal Year 2016 funding must be submitted to CITY's CCDO by June 1, 2015.

3. The CITY's CCDO is assigned monitoring responsibility for this AGREEMENT. WDC will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of WDC's books, records and files on the objectives covered by this AGREEMENT. WDC understands that CITY may require any and all books, records and files of WDC necessary to ensure WDC's compliance and use of generally accepted governmental accounting principles.
 - a. All such records shall continue to be available for inspection and audit for a period of five (5) years after the termination date hereof. However, if an audit or investigation of WDC begins during the course of this five-year period, then WDC is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. WDC agrees that during the Term of this AGREEMENT, any duly authorized representative of CITY's CCDO shall have the right to conduct on-site inspections

at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.

- c. The submission of falsified information or the failure to timely submit all information by WDC as requested by CITY is grounds for termination of this AGREEMENT.
- 4. WDC agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. WDC will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
- 5. WDC agrees to establish internal procedures that ensure employees funded or partially funded by this AGREEMENT have an established complaint and grievance policy.
 - a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, WDC will follow the procedures outlined in the San Antonio Municipal Civil Service rules in regard to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

- 1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
- 2. WDC will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds provided pursuant to this AGREEMENT to assure separation of funds, unless otherwise approved by the CITY's CCDO.
- 3. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the CITY's CCDO.
- 4. **To the extent allowed by law, WDC covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal or bodily injury, death and property damage made upon the CITY directly or indirectly arising out of, resulting from or related to WDC'S activities under this Agreement, including any acts or omissions of WDC, any agent, officer, director, representative, employee, consultant or subcontractor of WDC, 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 WDC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT,**

HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

5. Upon completion or termination of the objectives as described in this AGREEMENT, any unused funds, rebates or credits must immediately be returned by WDC to CITY.
6. WDC shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
7. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, WDC will immediately refund such amount to CITY. WDC further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The CITY's CCDO has the express authority to deduct such claims from subsequent reimbursements.
8. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following thirty (30) days after a written request by City, WDC shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of WDC read the entire AGREEMENT, including all attachments, between the CITY and WDC, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.
 - c. All CITY-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both WDC and its subcontractors related to this AGREEMENT.
 - d. If WDC expends fifty thousand dollars and no cents (\$50,000.00) or more in funds provided by CITY during the Term of this AGREEMENT, then WDC shall furnish the CITY'S CCDO and other City departments designated by the CCDO with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of WDC's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions and management letter should be submitted. The audited financial statements must

include a schedule of receipts and disbursements by budgeting cost category and a certification from WDC stating whether or not the terms and conditions of the AGREEMENT were met. If the CITY determines, in its sole discretion, that WDC is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have WDC pay for such audit. In addition, when WDC has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this AGREEMENT, the audit shall be conducted in accordance with the Single Audit Act Agreements of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.

9. WDC understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting.

IV. INSURANCE REQUIREMENTS

1. Prior to the commencement of any work under this AGREEMENT, WDC shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CITY’s CCDO, which shall be clearly labeled “Westside Development Corporation Agreement To Use Funds” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate and endorsements have been received and approved by the CITY’s CCDO. No officer or employee, other than the CITY’s Risk Manager, shall have authority to waive this requirement.
2. The CITY reserves the right to review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. In no instance will CITY allow modification whereby CITY may incur increased risk.
3. WDC’s financial integrity is of interest to the CITY; therefore, subject to WDC’s right to maintain reasonable deductibles in such amounts as are approved by the CITY, WDC shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at WDC’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent, in Umbrella or Excess Liability Coverage

e. Contractual Liability f. Damage to property rented by you	\$100,000
2. Directors and Officers (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

4. WDC agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of WDC herein, and provide a certificate of insurance and endorsement that names the WDC and the CITY as additional insureds. WDC shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY's Risk Manager, without subsequent CITY Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.

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

City of San Antonio
Attn: Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

6. WDC agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
 - Name the CITY, 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 the CITY, with the exception of the workers' compensation and professional liability policies;

 - Provide for an endorsement that the "other insurance" clause shall not apply to the CITY of San Antonio where the CITY is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, WDC shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend WDC's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
 8. In addition to any other remedies the CITY may have upon WDC's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order WDC to stop work hereunder, and/or withhold any payment(s) which become due to WDC hereunder until WDC demonstrates compliance with the requirements hereof.
 9. Nothing herein contained shall be construed as limiting in any way the extent to which WDC may be held responsible for payments of damages to persons or property resulting from WDC's or its subcontractors' performance of the work covered under this AGREEMENT.
 10. It is agreed that WDC's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this AGREEMENT.
 11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided..
 12. WDC and any WDC subcontractors are responsible for all damage to their own equipment and/or property.

V. EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. WDC agrees to post in a conspicuous place available to employees, applicants for employment and contractors funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. WDC will, in all solicitations or advertisements for employees or contractors placed by or on behalf of WDC, state that all qualified applicants will receive fair consideration for employment or contract without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, veterans status or political belief or affiliation.
3. WDC agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. WDC will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.

1. In the event of WDC's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and WDC may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. WDC further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of WDC on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of WDC;
 - c. No litigation or proceedings are presently pending or threatened against WDC or, if pending, have been disclosed by WDC in writing to CITY;
 - d. None of the provisions contained herein contravene or in any way conflict with the authority under which WDC is doing business, or with the provisions of any existing indenture or agreement of WDC;
 - e. WDC has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
 - f. None of the assets of WDC are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by WDC to CITY.

VII. LEGAL/LITIGATION EXPENSES

1. Under no circumstances shall the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. WDC must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.
2. During the term of this AGREEMENT, if WDC files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if it is found that WDC has violated this Article.
3. WDC, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.
4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by WDC in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AGREEMENTS

1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by agreement in writing executed by both CITY and WDC.
2. It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the Term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

IX. SEVERABILITY OF PROVISIONS

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 this 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.

X. NON-WAIVER OF PERFORMANCE

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall 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 CITY 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 any 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.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

1. All WDC invoices or reports regarding eligible expenditures pursuant to this AGREEMENT must be submitted to CITY's CCDO by WDC no later than thirty (30) days preceding the following quarter after WDC incurs the expense.
2. WDC understands and agrees that WDC is required to refund money, pursuant to 80(R) HB 1196, that WDC has received from CITY through this AGREEMENT, in the event of WDC's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

XII. ENTIRE AGREEMENT

This AGREEMENT constitutes the final and entire agreement between the Parties hereto and contains 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 hereof, and duly executed by the Parties.

XIII. NOTICE

1. For purposes of this AGREEMENT, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:
Director
Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

WDC:
Executive Director
Westside Development Corporation
2300 West Commerce, Ste. 207
San Antonio, Texas 78207-3839

and

City Attorney's Office
Commerce & Visitor's Services Division
City Hall, 3rd Floor
San Antonio, Texas 78205

2. Notice of changes of address by any Party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other Party's last known address within five (5) business days of such change.

XIV. PARTIES BOUND

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

XV. GENDER

Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVI. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XVII. TEXAS LAW TO APPLY

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.

XVIII. CAPTIONS

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

EXECUTED IN TRIPLICATE ORIGINALS this _____ day of _____ 2014.

CITY OF SAN ANTONIO

WESTSIDE DEVELOPMENT CORPORATION

Carlos J. Contreras III
Assistant City Manager

Leonard B. Rodriguez
President

ATTEST:

APPROVED AS TO FORM:

Leticia Vacek
City Clerk

Leslie Orton Haby
Assistant City Attorney

ATTACHMENT I

ATTACHMENT II

WDC LOAN PROGRAM

Guidelines and Procedures

WDC LOAN PROGRAM
TABLE OF CONTENTS

A. GENERAL INFORMATION

1. Program Purpose and Objective
2. Ineligible Businesses
3. Who May Apply
4. Ineligible Use of Proceeds
5. Eligible Area
6. Entrepreneur Training

B. APPLICATION PROCESS

1. Application Forms
2. Review of Application
3. Management/Feasibility Assessment
4. Assignment to Loan Officer
5. Lending/Credit Criteria

C. REVIEW, ANALYSIS, AND APPROVAL PROCESS

1. Brief Memo Prepared by Staff
2. Consideration of Loan by ILC & Board
3. Approval Letter of Commitment Issued

D. FUNDING PROCESS

1. Loans may be leveraged with SABDF, lenders, etc.
2. Closing Documents Prepared by Attorney & Title Company

E. LOAN SERVICING

1. Account Management
2. Credit Management
3. Problem Loans
4. Delinquent Loans
5. Loans in Default

EXHIBITS

Loan Application Flowchart
Loan Purpose, Amounts, Terms, Rates
Loan Fees, Collateral, Financial Information
Inner City Lending Guidelines
Letter of Decline

WDC LOAN PROGRAM

A. GENERAL INFORMATION

1. Program Purpose and Objective

The Westside Development Corporation recognizes that the West Sector has been identified and assessed as an area that is in need of revitalization.

WDC therefore feels that it is most urgent to fill the void that is not being served by the present city, state and federal loan programs or conventional financing.

Revitalization of the West sector of the City will require new and innovative financing methods. It is proposed that WDC make loans for projects in those areas of the city at/or below market interest rates.

Not-for-Profit organizations are presently excluded from borrowing money under existing federal loan programs. These organizations would become eligible under this program if their projects are for revitalization in the target areas.

Landlords, developers and property owners that are now only eligible under the HUD Enterprise Loan Program would be eligible under this program if the project is for revitalization of the West t sector of the city and the developer lacks the ability to obtain this credit elsewhere.

2. Ineligible Businesses

Lending, illegal activity, gambling, pyramid, networking sales, businesses who serve liquor (do not generate over 50% of their income from food sales) and media or publishing businesses that print opinions.

3. Who May Apply

Applications will be accepted from small businesses, not-for-profit organizations, landlords, developers, property owners and other entities involved in the revitalization of the West sector of the city. All applicants must demonstrate financial need, repayment ability, credit and capacity to manage.

4. Ineligible Use of Proceeds

WDC LOAN PROGRAM will not be used for the following loan purposes:

- a. Pay off creditors who are inadequately secured and in a position to sustain a loss.
- b. Distribution or payment to owner-partners or shareholders of the applicant or affiliated entities of same. Personal loans of owners or stockholders may not be included as part of the loan.
- c. Moving a business outside of the WDC-defined areas.

5. Eligible Area

The intent of the WDC LOAN PROGRAM is to serve the areas on the West sector of the city.

B. APPLICATION PROCESSING

1. **Application Forms** - Interviews will be made by the WDC Loan Officer and staff, as appropriate. The application will be provided upon request.
2. **Review of Application** - The assigned loan officer will be responsible for tracking applicants and applications.
3. **Management/Feasibility Assessment** - A management assessment will be made by WDC.
4. **Assignment to Credit Analyst** – The completed loan applications will be screened by a WDC Loan Officer and staff.
5. **Lending/Credit Criteria** - The financial condition of the company and its owners will be considered; particularly, their ability to meet the repayment schedule. The company's potential for growth and the owner's ability to meet personal obligations will also be considered. The credit criteria will be as follows:
 - a. Repayment of the loan must exist. Debt service coverage of at least 1:1 may be accepted. Projections may be accepted as repayment when past history does not support repayment.
 - b. Collateral must be 1:1 or better – WDC will require a first lien on purchased assets or existing unencumbered assets of the business, the borrower and/or the guarantor. WDC may also require a second lien on encumbered assets of the company, the borrower and/or guarantor.
 - c. Assets being purchased will be given 100% value; existing assets will be given market value or cost which ever is lower. Also, assets minus depreciation may be accepted as that value rather than cost or market.
 - d. A minimum of 10% cash/equity investment is required on existing businesses and a minimum of 20% cash/equity investment will be required on start-up businesses. A higher equity position may be required.
 - e. A guarantor or co-maker may be required. The borrower's and guarantor's credit history will be evaluated; and explanations required from the borrower(s) on any credit issues.

C. REVIEW, ANALYSIS, AND APPROVAL PROCESS

1. Loan Report

WDC Staff will prepare a Loan Report.

2. Loan Approval

The WDC Loan Officer and Loan Development Manager will review the loan report and provide a recommendation of either “approve” or “decline” to the WDC staff. That recommendation will be presented to the appropriate Committee or Board of WDC for consideration and a loan decision.

3. Approval Letter of Commitment

The client must sign the “Commitment Letter”, followed by the signature and approval of the Loan Officer.

D. FUNDING PROCESS

1. Where possible, WDC loans will be leveraged with WDC, CDLF, ACCION, and/or other lenders.
2. Preparation of Closing Documents (Legal costs may be rolled into loan)

An attorney contracted by WDC must prepare all closing documents. The loan may be closed by the same attorney or by a WDC loan officer. A WDC Loan Officer must attest the documents.

A Title Company must be used in the closing of all real estate loans and a Mortgagee Title Policy obtained on all real estate secured loans.

E. LOAN SERVICING

1. Account Management

Loan Servicing staff is responsible for monitoring the loan portfolio, processing monthly loan payments, and responding to the needs of the borrower.

For each loan, Loan Servicing will provide the following services:

- a. Monthly accounting reports of principal and interest received, balances remaining and any fees charged.
- b. Late payment notices to borrower.
- c. Year-end statements to borrower showing interest and principal payments made.
- d. Maintenance of a database for monitoring and follow-up of UCC filings, insurance, financial statements or other requirements as stated in the loan approval.
- e. Any other record keeping or services required by the WDC for management of the account.

2. Credit Management

To assure the WDC loans are managed and serviced in accordance with the SRBF standards, and in accordance with the program’s objectives, program administrator’s staff will periodically report on all loans serviced to WDC staff. The WDC will review the information to determine if there has been compliance with terms of the loan AGREEMENTS.

Credit management will include:

- a. Insistence on receipt of quality financial statements.
- b. Insistence on regular and timely receipt of financial statements.
- c. A review of submitted financial information.

- d. Verification of financial data by phone and/or on site visits when warranted.
- e. Obtaining personal and business credit reports as part of the business proposal package review.
- f. Reviewing the “terms” of the loan AGREEMENT and other documents with borrower to assure complete understanding of borrower’s obligations.
- g. Requiring annual, quarterly, or monthly financial statements from the borrower to assess the ongoing financial position of business.
- h. When necessary, conduct technical assistance conferences with borrower to analyze business condition and financial position. If needed, additional technical assistance will be scheduled to mitigate potential problems with borrowers.
- i. When necessary, recommend borrower attend seminars or classes in business and/or accounting to improve management ability and repayment ability of borrower in conjunction with approval of loan application.

3. Problem Loans

To avoid problems with credit delinquency and possible losses, program administrator’s staff along with WDC staff will review with the borrowers, those factors that indicate loan payment deterioration.

Some of the danger signals include:

- a. Delinquency.
- b. Anticipated renewal request.
- c. Adverse financial trends.
- d. Incorrect or improperly prepared financial information.
- e. Overly optimistic P&L and Cash Flow statements.
- f. Failure to provide any requested information in a timely manner.
- g. Disappearance of collateral or other assets.
- h. Borrowers hesitant to permit WDC staff to visit business.
- i. Appearance of other creditors and credit inquiries.

4. Delinquent Loans

Loans become delinquent the day after the payment is due. Collection procedures may commence if payment is not made within 15 days following payment due date, or if the business exhibits some of the danger signals listed in the Problem Loan Section. The WDC loan officer will make a determination of the seriousness of the problem by a review of:

- 1) Cooperation of borrower.
- 2) Ability of debt service.
- 3) Collateral value.
- 4) Extent of borrower's involvement with other creditors.

Step 1: The cooperation of the borrower is assessed based on the borrower's willingness to meet with loan officer to identify the problem and reach a workable solution.

Step 2: The ability of debt service by the borrower will be determined based on re-evaluation of both historical and projected future cash flows.

Step 3: The collateral position for the loan will be determined by verifying the value of collateral held, by actually locating the collateral and by reviewing its condition. Verification as to the correctness of UCC filings and other security instruments will also be made.

Step 4: The extent of the borrower's additional borrowing with other creditors will be determined through updated credit reports, trade checking, search of public record for liens and judgments, etc.

Step 5: If a workable solution to the loan delinquency results in a modification of terms and conditions to the original approval, the modification must be in writing, it must be signed by the borrower and it must be approved and signed by the loan officer.

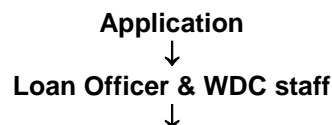
5. Loans in Default

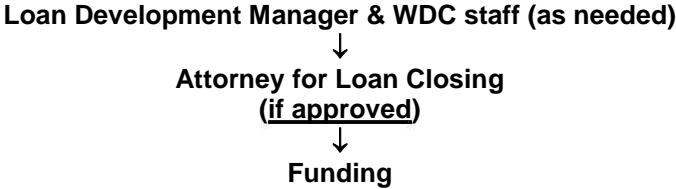
When no workable solution results from meeting with the borrower, the loan will be in default. Loans will be considered in default if any portion of a loan payment is more than sixty (60) days past due.

Staff will take the following actions:

- a. Notification to borrowers of default by registered mail.
- b. Borrower will be given thirty days to correct default.
- c. If default is not corrected within sixty (60) days, WDC staff will take any actions necessary to collect the loan balance. Such actions include, but are not limited to liquidating any collateral.
- d. If default is not corrected within one hundred eighty (180) days, the loan can be charged off. Loans that are secured by real estate as the primary collateral will be charged off after the collateral is liquidated.

Loan Application Flowchart





WDC LOAN PROGRAM

Loan Purpose:

Any legitimate business purpose including, but not limited to:

- Permanent Working Capital
- Seasonal Working Capital
- Fixed Asset Acquisition
- Leasehold Improvements
- Real Estate Equity Loans
- Business Start-Up Expenses

Loan Amounts:

- \$5,000 - \$250,000

Loan Terms: 12 - 120 months

(WDC will consider a 15 or 20-year amortization with up to a 10-year call.)

Loan Rates:

Competitive Fixed Rates of not less than 2% and not more than 3% over current money center bank prime rate as quoted in the Wall Street Journal. The rate will be set on the date of funding.

Loan Fees:

An origination fee of 1% of the loan amount will be charged, in addition to a \$300 attorney fee, plus a maximum of an additional \$500 to cover other closing costs. All fees may be incorporated into the loan.

Collateral:

Collateral requirement can be as high as 100% loan-to-value. Accounts Receivable, Inventory, Equipment, Vehicles, Real Estate and Personal Guarantee may be required.

- Equipment and Real Estate will be valued at the lower of cost or appraised value.
- Vehicles will be valued at NADA (Blue Book) loan value.

Financial Information:

- Minimum of two (2) years' business statements or tax returns
- Recent interim financial statement (within 90 days)
- Projections - financial or cash budget
- Detailed business plan for all applicants (start-ups only)
- Current guarantor financial statement and tax returns - when required
- Credit report
- Lien Search

Underwriting Standards:

- The borrower must show adequate earnings to retire its obligations. The SBC shall have a debt service coverage of no less than 1:1 of historical earnings or projections.

Credit History:

- A credit score of 550 or more
- If no traditional credit history exists, the administrator may use its discretion.
- All outstanding judgments must be paid and all delinquent accounts need to be brought current.

Technical Assistance:

Existing businesses (2 yrs+) will be screened, primarily on the basis of historical financial performance, to determine the appropriate level of technical assistance needed.

Recommended technical assistance will consist of a proposed 4-12 weeks Business/Entrepreneurial Training Program. The length of the training will depend on the demonstrated capabilities of the borrower or completion of an approved outside entrepreneurial program.

On-going Technical Assistance is recommended for start-up businesses for the first full year of operations.

Monitoring/Counseling may be conducted on a quarterly basis for start-up businesses and no less than semi-annually for existing businesses to compare actual results against the business plan or projections.

FY 2015 PROPOSED FUNDING RECOMMENDATIONS

Attachment 32 - FY 2015 Budget Ordinance

PROGRAM CATEGORIES	Total Score	FY 2014 Funding	FY 2015 Funding Recommendation	Variance
Live Performances				
The Magik Theater	95	\$ 178,795	\$ 241,875	\$ 63,080
The Classic Theater of SA	93	22,750	29,575	6,825
Children's Chorus of SA	93	90,666	108,799	18,133
Symphony Society of SA	93	540,060	613,852	73,792
Attic Rep	92	12,750	16,575	3,825
ARTS San Antonio	92	182,250	236,925	54,675
SOLI Chamber Ensemble	92	12,750	16,575	3,825
The Playhouse of SA	92	137,675	151,443	13,768
Youth Orchestra of SA	91	158,750	178,475	19,725
Children's Fine Arts Series	90	21,540	28,002	6,462
Cactus Pear Music Festival	90	53,000	63,600	10,600
Jump Start Performance ¹	89	201,750	51,205	(150,545)
Ballet San Antonio	89	65,000	80,522	15,522
The Network of Young Artists	88	38,860	37,580	(1,280)
Chamber Orchestra of SA	87	-	20,842	20,842
SA Choral Society	86	11,000	13,200	2,200
Woodlawn Theater	83	-	90,000	90,000
SA International Piano Competition	82	11,500	12,650	1,150
SA Chamber Choir	81	10,250	11,275	1,025
Alamo City Opera Piccola	80	-	36,892	36,892
SA Metropolitan Ballet	80	36,000	39,600	3,600
SA Dance Umbrella	72	12,500	-	(12,500)
Live Performances Subtotal		\$ 1,797,846	\$ 2,079,462	\$ 281,616
Museums				
Witte Museum	93	\$ 484,780	\$ 558,000	\$ 73,220
Southwest School of Arts	89	287,500	316,250	28,750
Contemporary Art for SA	87	170,750	188,000	17,250
Artpace Inc.	87	245,000	269,500	24,500
Guadalupe Cultural Arts Center	86	332,600	332,600	-
SA Children's Museum	84	140,000	160,000	20,000
SA Museum of Arts	82	330,500	347,025	16,525
Museums Subtotal		\$ 1,991,130	\$ 2,171,375	\$ 180,245
Community Groups				
Esperanza Peace and Justice Center	94	\$ 200,750	\$ 271,013	\$ 70,263
Bihl Haus Arts Inc.	91	30,000	90,000	60,000
Say Si	90	175,000	218,750	43,750
Musical Bridges Around the World, Inc.	87	47,500	66,108	18,608
San Anto Cultural Arts, Inc.	86	85,500	102,600	17,100
Gemini Ink	85	95,000	114,000	19,000
American Indians in Texas at the Colonial Missions	83	37,750	51,300	13,550
Centro Cultural Aztlan	81	91,500	109,800	18,300
Dreams Fulfilled Through Music	78	12,500	13,750	1,250
Urban-15 Group	76	107,000	117,700	10,700
Conjunto Heritage Taller	75	18,742	18,742	-
Community Groups Subtotal		\$ 901,242	\$ 1,173,763	\$ 272,521

FY 2015 PROPOSED FUNDING RECOMMENDATIONS

Attachment 32 - FY 2015 Budget Ordinance

PROGRAM CATEGORIES	Total Score	FY 2014 Funding	FY 2015 Funding Recommendation	Variance
Festivals				
Avenida Guadalupe	91	\$ -	\$ 13,633	\$ 13,633
San Antonio Parks and Foundation	91	-	13,600	13,600
International Accordion Festival ¹	87	30,500	18,090	(12,410)
Texas International Folk Dancers	87	-	3,704	3,704
Puerto Rican Heritage Society	85	-	4,900	4,900
Kausi Subermaniam	84	-	7,260	7,260
Contemporary Art Month (CAM)	83	-	1,368	1,368
The Renaissance Guild	82	-	3,000	3,000
Antonio Granjero	78	-	2,313	2,313
Festivals Subtotal		\$ 30,500	\$ 67,868	\$ 37,368
stART Place				
Marlowe/Rodriguez Collaboration	91	\$ -	\$ 8,000	\$ 8,000
Anna de Luna	90	-	8,000	8,000
Rick Stemm	88	-	6,300	6,300
Martinez Street Women's Center	86	-	7,000	7,000
SA Alumnae Chapter of Delta Sigma Theta	83	-	4,200	4,200
stART Playing Poetricity Workshop Collaborative	82	-	6,000	6,000
Ballet Latino de San Antonio	80	-	6,000	6,000
Alamo City Community Marching Band	80	-	4,500	4,500
Sistas in Business	79	-	2,750	2,750
Dreamland	78	-	2,500	2,500
Picture Your World Youth Photography Program	77	-	4,300	4,300
Deborah Keller-Rihn	76	-	5,000	5,000
stART Place Subtotal		\$ -	\$ 64,550	\$ 64,550
Artist Regranting				
National Association of Latino Arts and Culture		\$ -	\$ 30,000	\$ 30,000
San Antonio Artist Foundation		-	30,000	30,000
Artist Regranting Subtotal		\$ -	\$ 60,000	\$ 60,000
Agencies Funded in FY 2014, No Request FY 2015				
Benissimo Music Productions		\$ 12,000	\$ -	\$ (12,000)
Opera Guild of San Antonio		16,000	-	(16,000)
San Antonio Brass		12,500	-	(12,500)
Agencies Funded in FY 2014, No Request FY 2015 Subtotal		\$ 40,500	\$ -	\$ (40,500)
Additional Arts Funding Allocation				
Technical Assistance		\$ 20,000	\$ 20,000	\$ -
Sister City		40,000	100,000	60,000
Downtown Cultural Plan (SA2020/Centro Partnership)		50,000	-	(50,000)
Mission Drive In/Travis Park		55,000	83,278	28,278
Cultural & Creative Development Marketing		32,500	-	(32,500)
Texas A&M Funding Strategy		150,000	150,000	-
Arts Agency Operational Unallocated Fund		47,903	-	(47,903)
Additional Arts Funding Allocation Subtotal		\$ 395,403	\$ 353,278	\$ (42,125)
Grand Total		\$ 5,156,621	\$ 5,970,296	\$ 813,675
Other Staff Funding Recommendations				
The Opera of SA	58	182,500	125,000	(57,500)
National Western Art Foundation ²	66	100,000	100,000	-
Other Funding Subtotal		\$ 282,500	\$ 225,000	\$ (57,500)

¹ Agency applied for less funding than in prior year.

² FY 2014 amount was funded from General Fund in accordance with City Council-approved funding agreement. FY 2014 amount represents the last year of a 3 year funding agreement.

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000xxxx

STATE OF TEXAS *

COUNTY OF BEXAR * ARTS AGENCY CONTRACT WITH (Name of Contractor)

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. **2014-09-18-xxxx** dated September 18, 2014, and the **(agency name)**, (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department for Culture and Creative Development is designated as the managing City department (hereinafter referred to as "DCCD") for the City; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

WHEREAS, City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project(s) entitled Operational Support (hereinafter referred to as "the Project"); and

WHEREAS, City wishes to engage Contractor to carry out the Project; NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Program Statement, Performance Plan and Budget, affixed hereto and incorporated herein for all purposes as **Attachment I**.

Operational Support	Attachment I
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II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on **October 1, 2014**, and shall terminate on **September 30, 2015**.

2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.

2.3 Contractor understands that City will not distribute funds under this contract until Contractor has submitted all invoices and receivables required under the previous fiscal year's contract. This does not excuse Contractor from complying with Section 8.6 requiring all documents and required deliverables be submitted within a period not to exceed thirty (30) days from the termination date of the Contract.

III. CONSIDERATION

3.1 In consideration, City will reimburse Contractor for expenses incurred in accordance with the budget(s) approved by City Council in Ordinance No. **2014-09-18-xxxx**. Said budget(s) is (are) part of **Attachment I** to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount(s) as set forth in the table below:

Operational Support	\$	Attachment I
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Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

- 3.2 The funding level of this Contract is based on the allocation awarded to DCCD by the City of San Antonio. The allocation is based on an appropriation for the Operational Support and DCCD’s receipt of said allocation. The budget(s) to this Contract may be adjusted to correspond to the actual allocation awarded. If any of the funds received under this Contract are from the City’s Hotel Occupancy Tax collections, it is the understanding of the Parties that the amount set forth in Section 3.1 may be adjusted at any time to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines.
- 3.3 Contractor understands and agrees that this is a contract to provide matching funds for funding already received by Contractor and that City shall have no obligation to provide any funds hereunder until Contractor has received the matching funds required by the Arts Funding guidelines. City requires sufficient evidence that matching funds are in place prior to making any payments under this Contract. It is the understanding of the Parties that the amount and the availability of matching funds are based on Contractor’s operating budget that was established for Contractor during the Fiscal Year 2015 Funding Process.
- 3.4 Consequently, Contractor agrees to comply with the Special Provisions set forth in Article XVIII., below.

IV. PAYMENT

- 4.1 Prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall be financially stable and operate in a fiscally responsible and prudent manner, as determined at the sole discretion of City. Contractor shall provide any records requested by City that City deems necessary to make such a determination.
- 4.2 (A) Contractor agrees that this is a cost reimbursement contract and that City’s liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in **Attachment I** of this Contract. In no event shall City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.
- (B) All funds received under this Contract shall be subject to the following payment schedule (“Disbursement Schedule”):

Disbursement Schedule			
October	January	April	September
30%	30%	30%	10%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Invoice support documents must be provided by 4:00 p.m. on the 10th of the Month as set forth in the Disbursement Schedule and must reflect the budget set forth in Attachment I.
- (3) Contractor must provide support documentation for prior payments before receiving further payment.
- (4) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- (5) If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to invoicing, and submitting Contract Monitoring Reports and any and all documents related to the contract, as determined by the sole discretion of the Executive Director of DCCD, funds not yet received under this Contract shall revert to a monthly reimbursement schedule, as determined by the Executive Director of DCCD, according to standard procedures followed by City's Finance Department.
- 4.3 The City Manager, Assistant City Manager or the Director of DCCD may make changes to the Funding Schedule when doing so is in the best interest of the City and/or serves to promote the tourism and visitor industry and such changes shall not necessitate an amendment to this Contract.
- 4.4 The Executive Director of DCCD may require the Contractor's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- 4.5 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of DCCD.
- 4.6 Contractor shall submit to City all final requests for payment no later than thirty (30) days from the termination date of this Contract, unless Contractor receives written authorization from the Executive Director of DCCD prior to such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.
- 4.7 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.8 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to City.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of DCCD may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.
- 4.11 Contractor must be designated as a 501(c)(3).

V. PROGRAM INCOME

- 5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. Contractor shall be permitted to retain such funds to be:
- (A) added to the Project and used to further eligible Project and/or Contractor objectives.
- 5.2 Contractor shall provide DCCD, through the Contract Monitoring Report, notice of activity that generates program income. Contractor shall provide detail in the Contract Monitoring Report of the type of activity, time, and place of all activities that generate program income.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- 5.3 Contractor shall fully disclose and be accountable to City for all program income. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.4 Contractor shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

VII. AUDIT

- 7.1 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DCCD within ten (10) days of Contractor's receipt of the report.
- 7.2 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except if there is litigation or if the audit report covering such agreement has not been accepted, Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

- 7.3 City may, at its sole discretion, require Contractor to use any and all of City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and Contractor shall abide by such requirements.
- 7.4 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than ten (10) days from the date of notification of such disapproval or disallowance by City. At its sole option, DCCD may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by City. If

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. If DCCD elects to deduct such claims from subsequent reimbursements, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of Contractor and shall not be paid from any Project funds received by Contractor under this Contract.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 DCCD is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by DCCD, Contractor shall furnish to DCCD, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 Contractor shall submit to DCCD such reports as may be required by City, including the Contract Monitoring Report form, which is affixed hereto and incorporated herein as **Attachment II** preferably by electronic means. Said report is to be submitted to DCCD no later than 4:00 p.m. on the tenth (10th) day of month according to the schedule below in which the reported activities occurred as stated on the Performance Plan set forth in Attachment I.

Contract Monitoring Report Schedule			
1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
January 10 th	April 10 th	July 10 th	October 10 th

- 8.3 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor’s receipt of such request.
- 8.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Executive Director of DCCD, unless required to do so by a court of competent jurisdiction. DCCD shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

- 8.5 City and Contractor agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Contractor agrees to execute all documents reasonably requested by City to enable City to utilize all such property.
- 8.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City.
- 8.7 Contractor shall provide to DCCD all information requested by DCCD relating to the Contractor’s Board functions. Information required for submission shall include, but may not be limited to:
 - (A) Roster of current Board Members including the terms of each Officer (name, title, address, telephone number, fax number and e-mail address);
 - (B) Current Bylaws and Charter including any Amendments to Bylaws or Charter; and
 - (C) Schedule of anticipated board meetings for current Fiscal Year.

In addition, Contractor shall maintain and provide to City upon written request:

 - (D) Minutes of board meetings which if approved by the Contractors board will become part of the Contractors project records; and
 - (E) Board Agenda, if requested must be submitted at least three (3) business days prior to each Board meeting.
- 8.8 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.4 of this Contract.

IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:
 - (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City’s Department for Culture and Creative Development, which shall be clearly labeled “Operational Support” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent’s signature and phone number and be mailed with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City’s Department for Culture and Creative Development. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
 - (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
 - (C) A Contractor’s financial integrity is of interest to the City; therefore, subject to Contractor’s right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated by companies authorized to do business in the State of Texas and with an A.M. Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
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Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

<p>Broad Form Commercial General Liability Insurance to include coverage for the following :</p> <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability 	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles <p>** if transportation of participants is conducted</p>	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence</p>

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

City of San Antonio
 Attn: Department for Culture and Creative Development
 PO Box 839966
 San Antonio, Texas 78283-3966

(E) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions :

- Name the 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 the City
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

(F) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor’s performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

(G) In addition to any other remedies the City may have upon Contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.
- (I) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- (K) Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 **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 and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

10.2 **The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

10.3 **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.**

10.4 **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**

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

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.

- 10.5 **Employee Litigation** – In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

XI. APPLICABLE LAWS

- 11.1 All of the work performed under this Contract by Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:
- worker's compensation;
 - unemployment insurance;
 - timely deposits of payroll deductions;
 - Occupational Safety and Health Act regulations;
 - Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
 - American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
 - City of San Antonio and Bexar County charter, ordinances and bond ordinances.
- 11.2 **Non-Discrimination.** As a party to this contract, Contractor 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. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.
- 11.3 Contractor warrants that all taxes, which Contractor may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes if applicable the filing of:
- Information on Tax Return form 990, 990N or 990T,
 - Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and
 - Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.
- Contractor shall also maintain and submit to DCCD upon written request form 990, 990N or 990T.
- 11.4 Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - Texas Government Code Chapter 552 pertaining to Texas Public Information Act

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000xxxx**

- Texas Local Government Code Chapter 252 pertaining to Purchasing and Contracting Authority of Municipalities and Chapter 2254 pertaining to Professional and Consulting Services which can both be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

11.5 Contractor understands that certain funds provided pursuant to this Contract have been made available by City and/or by Federal, State, or other granting entities. Consequently, Contractor must comply with all laws, rules, regulations, policies, and procedures applicable to those specific funds. For example, CDBG Contractors are required to follow applicable CDBG regulations. In addition, Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable:

- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
- (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
- (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
- (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
- (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".

XII. NO SOLICITATION/CONFLICT OF INTEREST

12.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or

- (B) Have any direct or indirect interest in this Contract or the proceeds thereof.

12.5 Contractor acknowledges that it is informed that Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 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 "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his 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

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000xxxx**

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 subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52(e) of the City Ethics Code. If Contractor is a business entity, Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee 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). 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.

XIII. TERMINATION

- 13.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 13.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 13.3 Notwithstanding any other remedy contained herein or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of City, Contractor may be placed on probation during which time City may withhold reimbursements in cases where it determines that Contractor is not in compliance with this Contract. Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.
- 13.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XI, Section 11.2 of this Contract, Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to City any remaining funds received from City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 7.4 of this Contract. The obligations of Contractor to return such funds to City in accordance

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

with this Section, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 14.3 The prohibitions set forth in Article XIV., Sections 14.1 and 14.2 of this Contract include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to DCCD. Contractor shall list the name and number of a contact person from DCCD on the statement that Contractor's personnel can call to report said violations.
- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.
- 14.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XV. PERSONNEL MANAGEMENT

- 15.1 Contractor shall promptly inform City (within 5 business days) of any key employee status changes, whether or not such positions are funded under this Agreement.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- 15.2 Contractor shall provide City with its hours of operation no later than October 31, 2014. Contractor shall promptly inform the City if any change is made to daily schedule.
- 15.3 Contractor shall have a salaried full-time or part-time manager (works at least 20 hours per week, compensated at least a federal minimum wage) who is responsible for the business management of the organization on staff at all times during the term of this Contract. Contractor shall supply such manager's job description at the time of contract negotiation .
- 15.4 Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 15.4 Contractor is permitted to pay its full time employees for the total number of holidays authorized by City Council for City employees. If Contractor elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.
- 15.5 Contractor agrees to include job titles in their invoice(s), and additionally must provide to City upon request any salary or range increase/decrease information for City funded personnel positions.
- 15.6 Contractor agrees that all copies of written job descriptions for City funded personnel positions will be filed in all individual personnel folders for each position in the organization.
- 15.7 Upon request, the Contractor agrees to provide City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 15.8 At the sole discretion of the Executive Director of DCCD, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
 - (B) To serve as a juror;
 - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, mother, sister, brother, husband, wife or child, and other relatives, (including in-laws) if such other relatives are actually members of the employee's household. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or
 - (D) To attend seminars or workshops;
- 15.9 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.
- 15.10 Contractors providing performance pay for City-funded employees must perform regular employee appraisals which shall be made available to City upon request.
- 15.11 Contractor's primary and secondary contacts for this Contract will be identified upon contract negotiation and herein will have the ability to access agency files in order to function seamlessly during the course of business with the City. Contractor shall notify the City upon any change in contact information within 5 business days of the change.

XVI. ADVERSARIAL PROCEEDINGS

16.1 Contractor agrees to comply with the following provisions:

- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity; and
- (B) Contractor, at City’s option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against City remains unresolved.

XVII. CITY-SUPPORTED PROJECT

- 17.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is “supported by the City of San Antonio’s Department for Culture and Creative Development” and by utilizing the official DCCD logo (not the “sahearts” website log). The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 17.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 17.3 Contractor shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 17.4 If Contractor identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for reimbursement by City.
- 17.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 17.6 All City-supported events must take place within the City of San Antonio city limits.

XVIII SPECIAL PROVISIONS

- 18.1 Indecency. The following is City’s policy statement regarding material and/or performances funded under DCCD’s Arts Agency Contracts:
 - (A) Contractor is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised. Contractor shall forward to the City a copy of the content of the notice to be displayed along with the notification required by Section 18.1 (b.)
 - (B) Contractor must make DCCD aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty (30) days prior to the actual activity.
 - (C) The City Council shall have the right to terminate this Contract upon finding that Contractor’s activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

18.2 Tourism Impact. Contractor shall provide to City, prior to or at the time this Contract is executed, a list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry. Contractor may satisfy this requirement by submitting an existing calendar of events for the Contract period, provided that Contractor delineates which events on said calendar meet the specified requirements. Contractor shall update said list or calendar in the event of any modifications or additions.

18.3 Removal/Relocation. Contractor acknowledges that the location of the Project on City property may necessitate future removal or relocation that may subject the Project to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation of the Project, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in City's Unified Development Code, Article VI, Division 5, Section 35-656. Contractor agrees that a City decision made under this paragraph regarding if, when and how to remove the Project is final.

Contractor hereby expressly consents to both the installation and removal of the Project and thereby expressly waives his/her Moral Rights to the Project. It is agreed that if the Project, or any portion thereof, is removed from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, the Project may not thereafter be referred to as "a Project by Contractor".

XIX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

19.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XX. ASSIGNMENT

20.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXI. AMENDMENT

21.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of DCCD shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
 - B. modifications to the Performance Plan set forth in **Attachment I** hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I** hereto;
 - C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in Article III. Section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (**Attachment I**) of this Contract;
 - D. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio’s Risk Manager and the Executive Director of DCCD;
 - E. adjustments to the funding awarded under this Agreement in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 21.1(a) above; and
 - F. any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 21.1(a) and (e) above.
- 21.2 Any amendments to the Performance Plan must be made at least fifteen (15) days prior to any event being added to this Agreement by such amendment.
- 21.3 Any amendments to the Budget must be made at least fifteen (15) days prior to invoicing.

XXII. SUBCONTRACTING

- 22.1 Any work or services subcontracted hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by 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.

XXIII. OFFICIAL COMMUNICATIONS

- 23.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:

**City of San Antonio
 Department for Culture and Creative Development
 PO Box 839966
 San Antonio, Texas 78283-3966**

Contractor:

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000XXXX

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days prior to the change.

XXIV. VENUE

- 24.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXV. GENDER

- 25.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVI. AUTHORITY

- 26.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code Section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide DCCD verification of the foregoing requirements no later than the execution date of this Contract.

XXVII. INDEPENDENT CONTRACTOR

- 27.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 27.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 27.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

XXVIII. SEVERABILITY

- 28.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, 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 Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000xxxx

that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIX. CONTRIBUTION PROHIBITIONS

- 29.1 Contractor acknowledges that City Code Section 2-309 may apply to this Contract and provides that any person acting as a legal signatory for a proposed contractual relationship such as this one, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits their application for funding until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor’s business entity.
- 29.2 Contractor acknowledges that this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXX. ENTIRE CONTRACT

- 30.1 This Contract and its attachments constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective the _____ day of _____, _____.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

 Felix Padrón
 Executive Director
 Department for Culture & Creative Development

xxxxxxxxxxxxxxxxxxxxxx
 Address xxxxx
 San Antonio, TX 782xx

Authorized Signor

APPROVED AS TO FORM:

Print Name

City Attorney

Board President (if required by Agency)

ATTACHMENTS

- Attachment I. – Program Statement, Performance Plan & Budget
- Attachment II. – Contract Monitoring Report