

**CITY OF SAN ANTONIO
CITY MANAGER'S OFFICE**

TO: Mayor and City Council 

FROM: Sheryl Sculley, City Manager

COPY: Executive Leadership Team

DATE: September 9, 2015

**SUBJECT: CITY COUNCIL REQUESTS FOR AMENDMENTS TO THE PROPOSED
FY 2016 OPERATING AND CAPITAL BUDGET**

With this memorandum, I am providing to the Mayor and City Council the final list of City Council requests for potential amendments to the Proposed Fiscal Year 2016 Operating and Capital Budget. These potential amendments were reviewed with the City Council at the September 8 and September 9 Budget Work Sessions.

The attached updated potential amendments list reflects input from the Mayor and City Council provided during budget work sessions, and input from residents speaking at the budget open houses and budget public hearings. Included are recommendations to fund the potential expenditures amendments. With these requests for amendments and the funding recommendations provided, the FY 2016 Proposed Budget remains balanced.

Tomorrow, September 10, the City Council will be asked to adopt the FY 2016 Budget. There will be six separate actions that City Council will be asked to approve: 1) the Proposed FY 2016 Operating and Capital Budget with amendments, 2) ratification of the FY 2016 Adopted Budget, 3) the City Property Tax Operations & Maintenance Rate, 4) the City Property Tax Debt Service Rate, 5) Revenue Adjustments, and 6) the FY 2015 Closing Ordinance.

City Council Request for Potential Budget Amendments to the FY 2016 Proposed Budget
As of September 9, 2015

CAPITAL BUDGET			
Item		FY 2016	FY 2017
No.	Resource Amendments	Budget Impact	Budget Impact
1	FY 2016 Reserve for Future Capital Projects	5,000,000	0
2	Savings from completed facility maintenance projects	565,000	0
Total Capital Budget Resource Adjustment		\$5,565,000	\$0
Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
1	Good Samaritan Veteran's Outreach and Transition Center project (VOTC)	500,000	0
2	Lermas Building Infrastructure Improvements	500,000	0
3	Public restroom facility prototype	90,000	0
4	Martin Luther King Park Entrance Improvements (2012 Bond Supplement)	220,000	0
5	Bark Park Broadway/I35 Interchange	400,000	0
6	Community Street Lighting - \$30,684 per Council District	306,846	0
7	Indian Creek CentroMed Clinic - (Architectural & construction funds; total project is \$5 million of which \$4.5 million will be raised through a capital campaign)	450,000	0
8	Parks improvements in District 5 to include covered playgrounds, shade structures and water fountains	625,000	0
9	New synthetic field surface at O.P. Schnabel Park	250,000	0
10	Traffic management plan/project for Hillcrest Drive from Bandera to Babcock	250,000	0
11	Hardy Oak Road Extension. Developer Agreement for design and construction. City participates with 30% of cost	1,000,000	0
12	Friesenhahn Park Expansion - property acquisition	100,000	0
13	Nacogdoches Road repaving from Starcrest to Iota Drive	423,654	0
14	Port SA Site Development (Additional \$1.8 Million to be funded as amendment in Economic Development Incentive Fund in FY 2016)	0	1,539,960
15	Lone Star Rail District staffing and consultant services. Total City contribution in FY 2016 would be \$499,500; of this amount \$50,000 is included in the Proposed Budget. ¹	449,500	0
Total Capital Budget Expenditure Amendments		\$5,565,000	\$1,539,960

Note

¹ Capital funds in the amount of \$449,500 will fund existing street projects budgeted within the FY 2016 General Fund Budget. The General Fund will be used to fund this amendment.

City Council Request for Potential Budget Amendments to the FY 2016 Proposed Budget
As of September 9, 2015

AIRPORT FUND

Item		FY 2016	FY 2017
No.	Resource Amendments	Budget Impact	Budget Impact
1	Airport Fund Capital Budget	1,000,000	0
Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
2	Signage at Stinson Airport	1,000,000	0

PARKING FUND

Item		FY 2016	FY 2017
No.	Resource Amendments	Budget Impact	Budget Impact
1	Includes use of FY 2016 Proposed Parking Fund fund balance.	350,000	0
Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
2	Sub-Freeway Parking (US 281 - Brooklyn to 9th Street)	350,000	0

2015 PARKS DEVELOPMENT & EXPANSION FUND

Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
	Connection from Mission to Stinson Airport. This will be funded		
1	through the existing FY 2016 Parks Development & Expansion Fund allocation.	1,000,000	0

STORM WATER OPERATING FUND

Item		FY 2016	FY 2017
No.	Revenue Amendments	Budget Impact	Budget Impact
1	Includes use of FY 2016 Proposed Storm Water Budget	29,000	0
Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
2	Power washing of sidewalks on and within the boundary of South Frio, West Houston and Pecos, and Buena Vista. (3 times per year)	29,000	0

City Council Request for Potential Budget Amendments to the FY 2016 Proposed Budget
As of September 9, 2015

INFORMATION TECHNOLOGY SERVICES FUND

Item		FY 2016	FY 2017
No.	Revenue Amendments	Budget Impact	Budget Impact
1	Includes use of FY 2016 Proposed Information Technology Services Fund fund balance and additional savings from FY 2015	100,000	0

Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
2	Digital Inclusion Initiative	100,000	0

HOTEL OCCUPANCY TAX FUND

Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
1	Development of website that will serve as platform to begin defining a footprint for a cultural district in the Southtown and West area-Website will highlight creative entities in the area (Hotel Occupancy Tax Fund). This will be funded through the existing FY 2016 HOT allocation.	75,000	0

ECONOMIC DEVELOPMENT INCENTIVE FUND

Item		FY 2016	FY 2017
No.	Revenue Amendments	Budget Impact	Budget Impact
1	Includes use of FY 2016 Economic Development Incentive Fund fund balance	1,800,000	0

Item		FY 2016	FY 2017
No.	Expenditure Amendments	Budget Impact	Budget Impact
2	Port SA Site Development (Additional \$1.5 Million to be funded as amendment in Capital Budget in FY 2017)	1,800,000	0

PUBLIC EDUCATION & GOVERNMENT FUND

Item		FY 2016	FY 2017
No.	Revenue/Fee Amendments	Budget Impact	Budget Impact
1	Adds new fees for the Public Education and Government Access studios (SA-CAN) to include registration fees for students and general producers, fees for rental of equipment, reproduction fees for digital media, and workshops fees	24,762	24,762

ATTACHMENT 3
FISCAL YEAR 2016 REVENUES & APPROPRIATIONS

FISCAL YEAR 2016 REVENUES

		<u>ADOPTED AMOUNT</u>
AVAILABLE FUNDS		
Beginning Balance (Excluding Budgeted Financial Reserves)		\$ 63,868,294
GENERAL FUND FY 2016 REVENUES		
Revenues		
Current Property Tax		\$ 293,694,785
City Sales Tax		274,646,415
CPS Energy		335,933,940
Business and Franchise Tax		30,682,970
Liquor by the Drink Tax		7,714,000
Delinquent Property Tax		2,727,474
Penalty and Interest on Delinquent Taxes		2,130,000
Licenses and Permits		7,859,992
San Antonio Water System		13,896,079
Other Agencies		8,015,702
Charges for Current Services		
General Government		3,738,452
Public Safety		40,515,970
Highways/Streets/Sanitation		770,664
Health		2,768,116
Recreation and Culture		11,604,074
Fines		12,302,770
Miscellaneous Revenue		
Sale of Property		3,658,436
Use of Money and Property		1,882,253
Interest on Time Deposits		596,055
Recovery of Expenditures		2,185,853
Miscellaneous		203,048
Interfund Charges		1,800,000
Total Revenue		\$ 1,059,327,048
Other Revenues		
Transfers from Other Funds		36,971,686
Total Revenue and Transfers		\$ 1,096,298,734
TOTAL REVENUE, BEGINNING BALANCE, AND TRANSFERS		\$ 1,160,167,028

ATTACHMENT 3 (CONTINUED)**FISCAL YEAR 2016 APPROPRIATIONS (CONTINUED)****ADOPTED AMOUNT****GENERAL FUND FY 2016 APPROPRIATIONS**

Departmental Appropriations	<u>ADOPTED AMOUNT</u>
Animal Care	\$ 12,538,983
Center City Development and Operations	16,487,244
City Attorney	8,242,623
City Auditor	2,915,668
City Clerk	3,446,923
City Manager	3,179,198
Code Enforcement Services	14,478,535
Eastpoint Office	589,663
Economic Development	9,172,164
Finance	11,625,382
Fire	291,247,077
Government and Public Affairs	7,070,503
Health	12,427,282
Historic Preservation	1,560,838
Human Resources	5,842,752
Human Services	19,388,587
Library	37,711,983
Management & Budget	3,425,347
Mayor & Council	7,026,705
Municipal Court	13,901,811
Municipal Elections	84,811
Parks & Recreation	47,344,163
Planning	3,581,574
Police	425,037,118
Parks Police	13,909,439
Transportation and Capital Improvements	79,498,576
Total Expenditures	\$ 1,051,734,949
 Other Appropriations	
Agencies	19,027,505
Non-Departmental/Non-Operating	25,510,697
Transfers	2,405,138
Total Other Appropriations	\$ 46,943,340
 TOTAL GENERAL FUND APPROPRIATIONS INCLUDING TRANSFERS	\$ 1,098,678,289
 Reserves	
Financial Reserves to Maintain 10%	6,439,372
Reserves for Two-Year Balanced Budget	55,049,367
 TOTAL GENERAL FUND APPROPRIATIONS INCLUDING TRANSFERS & RESERVES	\$ 1,160,167,028

ATTACHMENT 3 (CONTINUED)**FISCAL YEAR 2016 APPROPRIATIONS (CONTINUED)**

	<u>ADOPTED AMOUNT</u>
DEBT SERVICE FUNDS	
Debt Service Fund	\$ 206,393,698
Airport System Bonds Series 2003, 2006, 2007, 2010A, 2010B, 2012	22,374,204
Passenger Facility Charge & Sub. Lien Bond Series 2005, 2007, 2010, 2012	12,850,203
Customer Facility Charge Revenue Bonds, Taxable Series 2015	6,293,270
Municipal Drainage Utility System Revenue Bonds, Series 2003, 2005, 2013	6,560,263
Parking System Refunding Bonds, Series 2004, 2008	1,649,257
Edwards Aquifer Protection Venue Tax Notes Series 2012	4,575,500
Solid Waste Refunding Bonds, Series 2006, 2010, COs 2006, 2007	292,177
Pre-K 4 SA Early Childhood Education Program, Revenue Notes Series 2013 A	3,290,484
TOTAL DEBT SERVICE FUNDS	\$ 264,279,056
SPECIAL REVENUE FUNDS	
Advanced Transportation District Fund	\$ 16,935,421
Child Safety Fund	2,398,355
Confiscated Property Fund	2,215,074
Convention & Visitors Bureau Fund	21,575,928
Community & Visitor Facilities Fund	41,026,976
Culture and Creative Development Fund	9,942,654
Hotel/Motel Tax 2% Tax Collection Fund	18,250,842
Hotel Occupancy Tax Fund	64,176,086
Convention Center Lease Payment Fund	26,822,143
Economic Development Incentive Fund	4,050,000
Energy Efficiency Fund	1,171,214
Golf Course Operating and Maintenance Fund	638,258
Inner City Incentive Fund	2,000,000
Juvenile Case Manager Fund	1,343,939
Municipal Courts Security Fund	463,194
Municipal Courts Technology Fund	768,043
Red Berry Mansion	59,864
PEG	2,296,673
Parks Development & Expansion Fund - 2005 Venue Projects	104,900
Parks Development & Expansion Fund - 2010 Venue Projects	14,795,618
Parks Development & Expansion Fund - 2015 Venue Projects	15,326,321
Parks Environmental Restricted Fund	6,819,162
Right of Way Management Fund	2,811,031
Starbright Industrial Development Corporation Fund	1,578,542
Storm Water Operating Fund	47,403,067
Storm Water Regional Facilities Fund	5,753,651
Tax Increment Financing Fund	485,586
Tree Canopy Preservation & Mitigation Fund	2,248,008
Visitor Information Center and City Store Fund	686,296
TOTAL SPECIAL REVENUE FUNDS	\$ 314,146,846
ENTERPRISE FUNDS	
Airport Operating & Maintenance Fund	\$ 92,445,213
Airport Passenger Facility Charge & Subordinate Lien Fund	16,659,554
Customer Facility Charge Fund	21,573,012
Development Services Fund	32,250,701
Market Square Fund	2,452,755
Parking Operating & Maintenance Fund	9,461,507
Solid Waste Operating & Maintenance Fund	107,038,813
TOTAL ENTERPRISE FUNDS	\$ 281,881,555

ATTACHMENT 3 (CONTINUED)
FISCAL YEAR 2016 APPROPRIATIONS (CONTINUED)

	<u>ADOPTED AMOUNT</u>
TRUST FUNDS	
City Cemeteries Fund	\$ 276,476
TOTAL TRUST FUNDS	<u>\$ 276,476</u>
INTERNAL SERVICE FUNDS	
Capital Improvement Management Services Fund	\$ 20,252,215
Equipment Renewal & Replacement Fund	42,902,359
Facility Services Fund	14,766,225
Fleet Services Fund	41,956,249
Information Technology Services Fund	56,812,598
Purchasing & General Services Fund	6,032,037
TOTAL INTERNAL SERVICE FUNDS	<u>\$ 182,721,683</u>
SELF INSURANCE FUNDS	
Employee Benefits Insurance Fund	\$ 149,611,101
Liability Insurance Fund	9,583,047
Unemployment Insurance Fund	261,842
Workers' Compensation Fund	15,793,167
TOTAL SELF INSURANCE FUNDS	<u>\$ 175,249,157</u>

STATE OF TEXAS)
)
COUNTY OF BEXAR)

AT-WILL EMPLOYMENT CONTRACT FOR ADMINISTRATIVE SERVICES

This Agreement is made by and between _____, hereinafter referred to as "Employer," and _____, hereinafter referred to as "Employee". This Agreement is made this _____ day of _____, 20 _____.

In consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

ARTICLE I.
SCOPE OF AGREEMENT AND LIMITATIONS OF AUTHORITY

1.01 Purpose. The purpose of this Agreement is to effect the purchase of administrative services in support of the City Council responsibilities of Employer.

(a) _____, as a _____-time Employee is hereby employed to perform such services for the above stated Employer as Employer directs said Employee to perform as more fully set forth in ARTICLE III hereof.

(b) In the performance of this work, duties and obligations hereunder, it is mutually understood and agreed that said _____, shall be considered an employee of Employer. Accordingly, the Employer shall have control, direction and dominion over the Employee in accordance with the terms of this Agreement and provided however, that the Employee shall be responsible for performing the services contemplated hereunder in a good manner and the work shall be conducted in strict accordance with currently approved practices.

1.02 Employee has no authority to act for or on behalf of the Employer except as provided for in this Agreement, no other authority, power or use is granted or implied.

1.03 The Employee may not incur any debt, obligation, expense, or liability of any kind against the Employer without said party's express written permission.

1.04 The Employee may not receive any money owed to the Employer without said Employer's express written permission.

1.05 The Employee has no exclusive rights or benefits other than those set forth herein.

1.06 The Employer is not responsible or liable for any misrepresentations, errors, omissions of any kind, negligence, carelessness, or other problems or disputes which the Employee may cause or be involved in or that may arise during the term of this Agreement.

1.07 The Employee agrees to hold harmless, indemnify and protect the Employer from any problems, disputes, misrepresentations, errors, omissions of any kind, negligence, carelessness, or other problems or disputes which the Employee may cause, or other contingencies that arise as a result of the Employee's performance of this Agreement.

1.08 The authority of the City Charter and Ordinances of the City of San Antonio and the laws of the State of Texas hereby limits the Employee.

1.09 The employee is not obligated under the terms of this agreement to perform any service for the

employer related to, directly or indirectly, the political activities commonly associated with and within the scope of political activities of Employer, and Employee is prohibited from engaging in such activities in connection with the services under this contract. The employee may participate in political activities commonly associated with and within the scope of political activities of Employer, provided such activities do not take place during duty hours for services under this contract. City equipment and resources provided to the Employee for use in performing services under this contract shall not be used directly or indirectly in connection with the political activities commonly associated with and within the scope of political activities of Employer.

ARTICLE II. AT-WILL RELATIONSHIP

2.01 Employer and Employee agree that this employment arrangement is an at-will relationship, terminable by either party at any time for any reason. Neither the provisions of ARTICLE IV concerning compensation, nor any other provision of this agreement is intended to have any limitation on the right of either party to terminate this relationship at-will.

2.02 Other Termination. This Agreement shall automatically terminate on the effective date that Employer ceases to be a member of the City Council of the City of San Antonio, without any further notice by Employer to Employee.

ARTICLE III. DUTIES

3.01 The Employee shall provide administrative duties in support of Employer's City Council Office responsibilities and is authorized to act for the Employer only to the extent necessary to fulfill the above described duties. No other authority is expressed or implied.

3.02 The Employee shall facilitate the resolution of problems which the constituents of District No. _____ may encounter, which the Employer may deem obligated to address and is authorized to resolve in the performance of the Employer's official duties as a City Council Member of the City of San Antonio.

3.03 The Employee agrees to devote the full time, energy and attention to the duties specified by the Employer.

3.04 The Employee agrees to provide prompt, courteous, efficient, and professional efforts to perform the administrative services contemplated by this Agreement.

ARTICLE IV. COMPENSATION

4.01 The contractually agreed price to be paid by Employer to Employee for the services contemplated hereunder is _____ per month. Said fee shall be paid in two installments of _____ payable on or about the 15th and 30th day of each month.

4.02 Employer is responsible for payment of all employment taxes imposed on employers under federal, state, or local law including withholding tax, social security tax or unemployment compensation, on the funds distributed to the Employee from the Employer.

4.03 If Employee is full-time, Employer agrees to pay compensation in an amount not to exceed \$300.00 per month as additional compensation to Employee to purchase medical insurance coverage. Said fee shall be paid in one installment payable on or about the 30th day of each month. In no event shall the total fee paid hereunder exceed the amount of \$300.00 per month. Payment shall cease upon cancellation or termination of medical insurance coverage. In order for the Employee to be reimbursed for said medical coverage, the Employee must furnish proof of insurance to Employer each month. Employee is responsible for payment of any and all insurance premiums including

errors and omissions policies and medical or life policies that Employee may need or desire.

4.04 Employer may elect to provide up to \$78 as a monthly parking allowance to the employee. This allowance shall be designated by employer in writing and employee shall furnish proof of parking expenses each month. Said fee shall be paid in one installment payable on or about the 15th day of each month.

4.05 Employer agrees to provide work space, supplies and secretarial support to Employee in connection with the provision of administrative services by Employee hereunder.

4.06 During the term of this agreement, Employee is allowed to utilize the Health and Wellness Center located at the Metropolitan Methodist Professional Building, 1303 McCullough Avenue, Suite 170.

ARTICLE V. NONCOMPETITION PROVISIONS

5.01 **Restrictive Covenants.** The Employee expressly agrees that while this Agreement is in effect, the Employee will not, directly or indirectly, as an employee, agent, proprietor, partner, broker, stockholder, officer, director, or otherwise, render any services to, or on her own behalf engage in or own a part or all of any business, enterprise or development, in conflict with the official duties of the Employer.

(a) Employee further expressly agrees that Employee will not use for his or her own benefit or disclose to any person confidential information of the Employer of any kind or character learned while acting as an Employee of the Employer, without the prior written consent of the Employer.

(b) The agreements contained in this article on the part of the Employee shall be construed as agreements independent of any other provisions of this Agreement, and the existence of any claim or cause of action of Employee against the Employer whether predicated on this Agreement or otherwise shall not constitute a defense to the enforcement by the Employer of the agreements contained in this article.

5.02 **Property Rights of COSA.** All constituent letters, reports, requests for service and all records of the services performed, any other records and books relating in any manner whatsoever to the constituents services are official records and the exclusive property of the City of San Antonio. Upon the termination of this agreement all such books, records and documents shall remain with the Council District.

ARTICLE VI. APPLICABILITY OF THE ETHICS CODE OF THE CITY OF SAN ANTONIO

Employee understands and agrees that he or she is bound to comply with the provisions of the Ethics Code of the City of San Antonio as it applies in all respects to city employees as such code currently exists at the time of execution of this contract and as such code may be amended thereafter.

ARTICLE VII. GENERAL AND ADMINISTRATIVE PROVISIONS

7.01 **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representative, successors and assigns.

7.02 **Assignment.** The Employee shall have no right to transfer or assign his or her interest in this Agreement without the prior written consent of the employer.

7.03 **Time Limits.** Time is of the essence in this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

7.04 No Waiver. The failure or delay in the enforcement of the rights detailed herein by either party shall not constitute a waiver of said rights or be considered as a basis for estoppel. Either party may exercise its rights herein despite delay or failure to enforce said rights.

7.05 Dispute or Contest. In the unlikely event that a dispute occurs or action at law or in equity arises out of the operation, construction or interpretation of this Agreement, the losing Party shall bear the expense of attorney's fees and costs incurred by the prevailing Party in the action.

7.06 Paragraph Headings. The paragraph headings used herein are descriptive only and shall have no legal force or effect whatever.

7.07 Use of Pronouns. The use of the neuter singular pronoun to refer to the parties described herein shall be deemed a proper reference even though the parties may be an individual, a partnership, a corporation, or group of two or more individuals, partnerships, or corporations. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one party to this Agreement, and to either corporations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

7.08 Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. Any and all obligations or payments are due and payable in San Antonio, Bexar County, Texas.

7.09 **Severability.** The Parties to this Agreement agree that should any portion or provision of this Agreement be found or agreed to be unenforceable, waived, or otherwise invalid, the remaining portions and provisions contained herein shall still remain in full force and effect.

7.10 Entire Agreement. This Agreement shall represent the entire agreement by and between the parties hereto except as otherwise provided herein, and it may not be changed except by written amendment duly executed by all parties hereto.

7.11 Effective Date. This Agreement shall become effective upon execution by Employer and Employee.

EMPLOYEE WARRANTS THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS ITS CONTENTS PRIOR TO SIGNING THIS AGREEMENT AND BY INITIALING NEXT TO THIS PARAGRAPH KNOWINGLY AGREES TO THE TERMS AND CONDITIONS OF THIS AT-WILL EMPLOYMENT CONTRACT UPON HIS/HER OWN FREE WILL.

Signed, Accepted and Agreed to this ____ day of _____, 20__ by the undersigned parties who hereby acknowledge that they have read and understand this and that they execute this legal document voluntarily and of their own free will.

EMPLOYER:

EMPLOYEE:

City Councilmember, District

STATE OF TEXAS)
)
COUNTY OF BEXAR)

Before me on this day personally appeared _____ who is designated as the Employer in the foregoing CONTRACT FOR ADMINISTRATIVE SERVICES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this _____ of _____, 20____.

Notary Public in and for Bexar County, Texas

My commission expires:

STATE OF TEXAS)
)
COUNTY OF BEXAR)

Before me on this day personally appeared _____, who is designated as the Employee in the foregoing CONTRACT FOR ADMINISTRATIVE SERVICES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this _____ of _____, 20____.

Notary Public in and for Bexar County, Texas

My commission expires:

**STATE OF TEXAS } AMENDMENT TO
COUNTY OF BEXAR } AT-WILL EMPLOYMENT CONTRACT FOR
 } ADMINISTRATIVE SERVICES**

**THIS AMENDMENT TO THE AT-WILL EMPLOYMENT CONTRACT FOR
ADMINISTRATIVE SERVICES** (hereinafter "Amendment") is made by and between
Councilman _____ (hereinafter "Employer") and _____ (hereinafter
"Employee") for good and valuable consideration, the receipt and sufficiency of which is hereby
acknowledged by the parties.

L.

This Amendment is executed pursuant to Subsection 7.10 of the At-Will Employment Contract For Administrative Services (hereinafter "Contract"), entered into by and between Employer and Employee on_____. A copy of said Contract is attached hereto and incorporated herein for all purposes as **Attachment I**.

II.

Subsection 4.01 of the Contract is hereby amended in its entirety to read as follows:

4.01 The contractually agreed price to be paid by Employer to Employee for the services contemplated hereunder is \$_____ effective _____. Said fee shall be paid in two (2) installments of \$_____, payable on or about the 15th & 30th of the month.

The Employee warrants that (s)he has read this Amendment, understands its contents prior to signing, and knowingly agrees to the amended terms herein upon his/her own free will.

Furthermore, Employer and Employee agree that this Amendment in no way alters their at-will relationship, terminable by either party at any time for any reason. Neither the provisions of this Amendment nor any other provision of the Agreement is intended to have any limitation on the right of either party to terminate this relationship at-will.

All other provisions of said Agreement are hereby retained in their entirety and remain unchanged.

The parties sign this Amendment on the _____ day of _____, 2015.

EMPLOYER:

EMPLOYEE:

Councilman, District

SUBJECT: City Council Expense Reimbursements

1. POLICY

The policy of the City of San Antonio is to reimburse City Councilmembers for actual costs of authorized business related expenses in connection with the official duties of a Councilmember up to \$10,000 per fiscal year. Additionally, the mayor and each Councilmember shall receive a \$70 cellular telephone allowance; and each shall have the option of receiving a monthly \$600 car allowance, or reimbursement up to \$600 per month for business mileage, both incurred in connection with their official duties. These monthly amounts may be adjusted in accordance with the CPI, as adopted by subsequent ordinance.

2. PURPOSE

To establish procedures for processing requests for reimbursement of eligible expenses from the City Councilmember expense accounts and to properly document/report such payments to Councilmembers in compliance with requirements under the United States Internal Revenue Code.

3. RESPONSIBILITY

- a) Councilmembers will be responsible for submitting proper documentation to the City Clerk's Office to substantiate their requests for expense reimbursement. Monthly requests for the reimbursement will be reviewed by the Assistant to Council prior to submittal to the City Clerk's Office. All non-expendable items purchased with expense account funds will be inventoried (to include placing inventory tags on such property when otherwise required by City Procedures) and are to be returned to the Office of Council Support upon leaving office.
- b) The City Clerk's Office, in coordination with the Office of Council Support, will be responsible for reviewing expense vouchers, ensuring that business-related expenses submitted for reimbursement are in compliance with this policy, and preparing requests for payments. The City Council Support Office is responsible for maintaining an inventory of all non-expendable items purchased by each Councilmember from expense account funds, and for taking all steps necessary to ensure that these assets are returned to the Office of Council Support when a Councilmember leaves office. The inventory list shall be provided to the Finance Department for recording as an asset of the City as required by established City Procedures.

- c) The City Attorney's Office will be available, as necessary, on a case-by-case basis, to assist in the determination of whether an expense is eligible for reimbursement in accordance with Article VIII, Sec. 3 of the Texas Constitution and Section 9, Paragraph 3 of the City Charter.
- d) The Finance Department, Division of Accounting, will be responsible for a secondary review of business related expenses submitted for reimbursement, processing requests for payments, and issuing checks to Councilmembers. The Finance Department shall also be responsible for accounting for non-expendable items in accordance with established City procedures.

4. ELIGIBLE EXPENSES

Expenses incurred by Councilmembers that are reasonable, necessary, made in connection with councilmember's official duties and expended for public purposes of the City of San Antonio are eligible for reimbursement in accordance with Article VIII, Sec. 3 of the Texas Constitution and Section 9, Paragraph of the City Charter.

Examples of eligible expenses for Councilmembers include, but are not limited to the following: equipment; tuition to a seminar or training class to learn more of public issues; a luncheon hosted by the district to communicate with a neighborhood group or constituents concerning problems needing attention; equipment, and reimbursement of expenses for district staff incurred in the performance of their duties; expenses to a private or non-profit entity, neighborhood association, or individual considered to be in the execution of a Councilmember's official duties; subscriptions to publications; and other City of San Antonio public purpose related expenses.

Examples of ineligible expenses include, but are not limited to the following: contribution or donation to a private or non-profit entity, neighborhood association, or individual not considered to be in the execution of Councilmember's official duties (whether in the form of a cash or check contribution, purchase of raffle tickets, etc.); alcoholic beverages, and ordinary living expenses that would normally be incurred whether or not serving on the City Council of the City of San Antonio (i.e. dry cleaning, personal lunches, etc.)

The above examples of eligible and ineligible expenses are general guidelines and not all inclusive; and specific fact situations that do not clearly fall within these examples should be referred to the City Attorney's office for an opinion.

5. TREATMENT OF REIMBURSEMENTS TO COUNCILMEMBERS UNDER THE UNITED STATES INTERNAL REVENUE CODE

In order for expense reimbursements to be excluded from the gross income of a Councilmember, the Councilmember must comply with the substantiation requirements of Reg. Sec. 1.274-2(A)-(e), that is, indicate on the applicable expense report (Exhibit II) the following elements:

1. Date/Time
2. Place
3. Amount
4. Business Purpose
5. Business relationship of person(s) with whom the person incurring the expense met

In accordance with Internal Revenue Service regulations, this report must be submitted within 60 days after the expenses were paid or incurred, and any excess reimbursement must be returned within 120 days.

6. DOCUMENTATION REQUIRED TO QUALIFY FOR EXPENSES REIMBURSEMENT

The Internal Revenue Service requires documentary evidence such as copies of receipts, paid bills or similar records for expenses of \$75 or more. However, for purposes of this policy, the submission of documentary evidence for all expenses regardless of amount is required.

7. CAR EXPENSE ALLOWANCE/MILEAGE REIMBURSEMENT

A monthly car allowance of \$600 will be paid to City Councilmembers as a mechanism to reimburse them for business mileage incurred in connection with their official duties. This monthly car allowance will be administered in compliance with applicable Internal Revenue Service regulations and reporting for amounts paid will be made in accordance with these regulations. The car allowance will be paid monthly at the same time other executive car allowance is paid.

As an alternative to receiving the monthly car allowance, Councilmembers may submit a mileage log on a monthly basis reflecting eligible business mileage incurred in connection with their official duties. Eligible mileage will be reimbursed at the rate per mile established by the Internal Revenue Service up to a total of \$600 per month. In order to receive reimbursement under this method, an itemized business mileage log (Exhibit III), which includes the following elements, must be submitted and included with the Request for Reimbursement of Business Expenses:

1. Date
2. From
3. To
4. Miles Driven
5. Business Purpose

8. REIMBURSEMENT PROCEDURES

Documentation and substantiation to be included with the Councilmember Request for Reimbursement form (Exhibit "I") are as follows: the Business Expense Receipt Log (Exhibit "III").

The monthly expense reimbursement procedures policy is outlined as follows:

- a) The Request for Reimbursement form with all supporting documentation and substantiation should be submitted to the City Clerk's office by the fifth business day of the month following the month for which reimbursement is requested.
- b) The Request for Reimbursement form requires the Councilmember to certify that the expenses and substantiation submitted are true and correct, therefore, the Councilmember's original signature is required. Any amounts not properly substantiated will not be reimbursed until the proper substantiation is provided. Substantiation should occur within a reasonable period of time (Internal Revenue Service recommends 120 days from the date the expense was incurred).
- c) Request for Payments for expense reimbursement will be prepared by the City Clerk's Office and submitted to the Division of Accounting of the Finance Department.
- d) The Finance Department, Division of Accounting, will process each Request for Payment and have each check available within three (3) business days after receipt of the Request for Payment.

The City of San Antonio, Texas

OFFICE OF THE CITY COUNCIL

CITY COUNCIL PROJECT FUNDS APPLICATION



INTERNAL OR EXTERNAL CCPF APPLICATION

Today's date:	Are you submitting an: <input type="checkbox"/> Internal Application <input type="checkbox"/> External Application		
APPLICANT INFORMATION			
Applicants Last Name:	First:	Middle:	*Amount Requesting:
<i>*Please note that any award over \$10,000 will require City Council Approval.</i>			

Council District Request (May send to multiple districts):

District 1 District 2 District 3 District 4 District 5 District 6 District 7 District 8 District 9 District 10 Mayor

Project Request- CCPF FUNDS (Delegate Agencies Excluded, if applying under same program):

City Council finds that investment of CCPF in programs, activities, events, scholarships, goods or services deemed eligible under the criteria and guidelines established under this ordinance serve the municipal public purposes of:

- Promoting the health, safety and welfare of the community;
- Promoting family, social and economic stability;
- Promoting community education and training, which, in part, prepares the workforce for productive employment and meets the professional needs of the City;
- Promoting community recreation;
- Preventing homelessness; and
- Revitalizing neighborhoods.

Please identify your project request:

District/Community Events

Education

Youth/Senior Activities

City Council finds that the following qualify as eligible Applicants for CCPF:

- 1) A City Council District Office for district events;
- 2) A non-profit entity that: a) is exempt from federal income tax or is able to show proof at the time of application for CCPF of having filed for tax exempt status as determined by the Internal Revenue Service under section 501(c)(3) of the United States Internal Revenue Code, or is an affiliate of a non-profit, tax-exempt corporation; b) is able to show proof of exemption from franchise taxes by the Texas State Comptroller at the time of application for CCPF; and c) demonstrates that the proposed services, programs and events funded by CCPF will be open the public;
- 3) A neighborhood association or other legally formed entity whose purpose as stated in its organizational documents is defined as serving the community;
- 4) Another governmental entity, such as a municipality, county, school district, or other political subdivision of the State of Texas, who is requesting CCPF for a project it is not required to carry out under its own charter or mandates by state or federal law, unless it involves a joint project with the City.

PROJECT INFORMATION

Project Name:	Project Liaison:	Date of Event: / /
---------------	------------------	--------------------

Description of Event/Purpose (*Attach Document: 200-300 words*):

Invoices of how funds will be allocated (*I certify that I have attached all invoices related to this request. I understand that any missing invoices will not be covered by funds and purchases need to exclude alcohol, gift/gas cards, livestock, equipment or supplies from city departments and delegate agencies*):

Important Note: Please if you are not a registered vendor with the City of San Antonio, visit this website to register at:
<http://www.sanantonio.gov/purchasing/SAePS.aspx>

Project Liaison Phone Number:	Email:
Department/District/Organization:	Address:

FOR EXTERNAL APPLICANTS ONLY

All fields are required to have the attachments when submitting. Applications will be considered incomplete if missing information.

Agency Board Roster:

I certify that I have attached a list of board members and their contact information.

Agency Fact:

I certify that I have attached a copy of the organizations purpose or mission, the services that the organization offers along with the name of the project & program description for which funds are being requested.

Organization Verification of Federal Tax Identification #

I certify that I have attached a copy of the organizations Federal Tax Identification letter.

Acknowledgement Agreement: [Terms & Conditions]

Disagreement of these terms will cancel the submission of this grant application.

Agree with the terms

SIGNATURE

All fields are required to be filled out prior to submitting. Applications will be considered incomplete if missing information.

I certify that the statements contained in this City Council Project Fund Application are true, correct and complete to the best of my knowledge and belief.

Signature of Applicant: _____

Date: / /

APPROVAL OF FUNDS

Signature of Councilmember (If Applicable): _____	Date: / /
Signature of Department Director/Department (If Applicable): _____	Date: / /
Fiscal Approval: _____	Approved Funding: _____

Contract #

STATE OF TEXAS *

COUNTY OF BEXAR *

CITY OF SAN ANTONIO *

**DELEGATE AGENCY CONTRACT
WITH**

[Insert Contractor name]

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 Director of the Department of Human Services pursuant to Ordinance No. 2015-09-10 _____, dated September 10, 2015, and the _____, (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department of Human Services is designated as the managing City department (hereinafter referred to as "Managing City Department") for the City; and

WHEREAS, the City has provided certain funds from the City of San Antonio General or Grant Fund Operating Budget (hereinafter referred to as "General Fund" or "Grant Fund," as applicable) for _____ services; and

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

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

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 The Contractor 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** and **SA2020 Scorecard** attached hereto and incorporated herein for all purposes as Attachment I.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on **October 1, 2015** and shall terminate on **September 30, 2016**.

III. CONSIDERATION

3.1 In consideration, the City will reimburse Contractor for costs incurred in accordance with the budget approved by City Council of San Antonio in the above referenced Ordinance, and all subsequently authorized amendments to that budget. Said budget is attached hereto and incorporated herein for all purposes as Attachment II. It is specifically agreed that reimbursement hereunder shall not exceed the total amount of \$ _____.

3.2 The funding level of this Contract is based on an allocation from the following funding sources:

[SELECT THOSE THAT ARE APPLICABLE, AND DELETE ALL OTHERS]

_____ General Fund
 _____ Community Development Block Grant (CDBG) CFDA # _____
 _____ Community Service Block Grant (CSBG) CFDA # _____
 _____ Emergency Solutions Grant (ESG) CFDA # 14.231
 _____ Housing Opportunities for Persons with Aids (HOPWA) CFDA # 14.241
 _____ Federal Child Care Matching Funds
 _____ (Other funding sources)

Consequently, Contractor agrees to comply with the **Funding Guide**, attached hereto and incorporated herein for all purposes as Attachment III.

3.3 [If grant funded, confirm that grant's matching requirements are met through the following paragraph, or modify as necessary] Contractor understands and agrees that the funds provided to Contractor from the City's Consolidated Human Development Funding Services Pool shall represent a limited percentage of Contractor's total agency revenues and expenses for the contract term, which percentage is established by City Council and is subject to change. The percentage of the total agency revenues and expenses derived from sources other than City funds is sometimes referred to as the agency's "match" requirement. Contractor's total agency revenues and expenses derived from non-City sources and from the City is Contractor's Total Budget. Contractor shall comply with any matching fund requirements set by City Council that apply to Contractor's contract, regardless of when such requirements are passed. If Contractor receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then Contractor shall obtain thirty-five percent (35%) of its Total Budget from non-City sources (i.e., no more than sixty-five percent (65%) of its Total Budget is derived from the City). If Contractor receives less than an aggregate amount of \$1,000,000.00 in City funds from all City funded contracts, then Contractor shall obtain fifty percent (50%) of its Total Budget from non-City sources (i.e., no more than fifty percent (50%) of its Total Budget is derived from the City). City shall require sufficient evidence that such funding is in place with Contractor's annual program budget prior to contract execution. Contractor understands that City shall have no obligation to provide any funds hereunder until Contractor demonstrates having secured the percentage of matching funds required of Contractor. Contractor understands and acknowledges that Pell grants and other awards received by individuals shall not count toward its matching fund requirements. Additionally, Contractor understands and acknowledges that in-kind contributions shall not count toward its matching fund requirements. Contractor shall provide acceptable evidence, as determined solely by the City, that Contractor has expended a funding amount from non-City funds equal to or greater than the applicable matching funds percentage requirement. City reserves the right to make a request at the end of each quarter throughout the Contract term for evidence that Contractor has expended or is on course to expend the applicable percentage of funds constituting its match prior to the end of the Contract term. If Contractor does not provide City with acceptable evidence that funds have been expended as required herein, Contractor understands and agrees that City may reduce or recapture pursuant to 4.1 the amount of City funds provided to Contractor in order to comply with the required expenditure ratio of non-City funds to the Total Budget, without first obtaining the approval of City Council.

3.4 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Contract are contingent upon the actual receipt of adequate General or Grant Fund revenue, as applicable, to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Contract or should awarded Grant Funds be reduced, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this Contract or reduce the Scope of Work and Consideration accordingly.

IV. PAYMENT

4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the 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, including but

not limited to those laws referenced in Section XII hereof, 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 II of this Contract, unless (a) a subsequent budget revision has been approved and signed by the Director of the Managing City Department or designee in cases where the total Contract Budget remains the same, or (b) a Contract amendment has been approved and signed by the Director of the Managing City Department [insert, if applicable: or designee] pursuant to Section 24.1 of this Contract in cases where there is an increase or decrease to the total Contract Budget. Approved budget revisions and Contract amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Contract amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Contract to the budget shall mean the budget as revised through approved budget revisions or Contract amendments. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. Contractor shall remit to City within ten (10) business days after the City makes the request for remittance any funded amounts which were paid pursuant to this Article IV and used to cover disallowed costs. Any such amounts not remitted within ten (10) business days may, at City's option, be subject to offset against future funding obligations by City. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees.

4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request in the form prescribed by the City. Contractor agrees that the City shall not be obligated to pay for any advances requested. In those instances in which advance payments are authorized, the Director of the Managing City Department may, in the Director's sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final. In those instances in which advance payments are authorized:

- (A) Contractor's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that an advance payment check is available from the City, so long as services have been performed by the subject vendor.
- (B) The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited with said bank, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor's account balance to exceed the FDIC limit shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. Contractor shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made pursuant to this and all other City contracts.
- (C) The City may, in its sole discretion, either deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Contract term, or from a single subsequent monthly reimbursement the full amount previously advanced to Contractor. The City may consider factors such as projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

- 4.3 Contractor shall submit to City no later than the fifteenth (15th) of every month a monthly Request for Payment in the form prescribed by City, which details the specific costs (by category and by program account number) Contractor expensed in the previous month for the services delivered as described in Article I herein, including supporting documentation of such costs as may be required by the Director of the Managing City Department. The Request for Payment shall also specify the Program Income (as defined herein) received or projected during the same time period. The Director of the Managing City Department may require the Contractor's submission of original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses.
- 4.4 City shall make reimbursement payments of eligible expenses to the Contractor of any undisputed amounts as determined by the Director of the Managing City Department in accordance with established procedures, so long as City receives a properly completed and documented Request for Payment. City shall make payment to Contractor within 30 calendar days of receiving a valid and approved Request for Payment.
- 4.5 The Contractor shall submit to City all final requests for payment no later than 45 days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.
- 4.6 Contractor agrees that the City shall not be obligated to any third parties of Contractor (including any subcontractors or third party beneficiaries of Contractor) under this Contract.
- 4.7 Contractor agrees that administrative overhead costs may not exceed twenty percent (20%) of the funding provided pursuant to this Contract. Contractor shall submit detailed administrative costs by line item with its annual program budget prior to Contract execution by the deadline established by the City.
- 4.8 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
 - (A) accurate, current, and complete disclosure of financial support from each federal, state and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
 - (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;
 - (G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.9 Contractor agrees that Contractor costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.

4.10 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Project funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included with Contractor's annual program budget prior to Contract execution by the deadline established by the City. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

4.11 Upon expiration or early 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, must immediately, upon receipt, be returned by Contractor to the City. Upon expiration or early termination of this Contract, all advance payments exceeding allowable costs incurred during the Contract term or for which Contractor fails to deliver services as consideration and as specified under the Contract shall be returned within twenty (20) calendar days of written notification to Contractor of the need for reimbursement.

4.12 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

4.13 Contractor agrees that prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. Contractor agrees that the City may immediately terminate this Contract if the City finds, as solely determined by the City, that Contractor is in such unsatisfactory financial condition as to endanger performance under this Contract. The City may consider evidence such as the apparent inability of Contractor to meet its financial obligations and items that reflect detrimentally on the credit worthiness of Contractor. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of Contractor, the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

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. At the sole option of the Director of the Managing City Department, Contractor will either (a) be required to return program income funds to City through the Managing City Department, or (b) upon prior written approval by the Director of the Managing City Department, Contractor may be permitted to retain such funds to be:

(A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or

(B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.

5.2 In any case where Contractor is required to return program income to the Managing City Department, Contractor must return such program income to City within the timeframe that may be specified by the Director of the Managing City Department. If the Director of the Managing City Department grants Contractor authority to retain program income, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.

5.3 Contractor shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.

5.4 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.

5.5 Contractor is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.

5.6 Contractor shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

6.1 The Contractor agrees to comply with all the terms and conditions that the City must comply with within its contract with the Grantor, if this Contract is Grant funded. If applicable, a copy of said Grant contract is attached hereto and incorporated herein for all purposes as Attachment V.

6.2 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 the City, is the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the Grantor's rules or regulations, if Grant funded, and shall have the final authority to render or secure an interpretation.

6.3 Contractor shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director of the Managing City Department.

6.4 The City shall have the authority during normal business hours to make physical inspections of the operating facility occupied by Contractor for the administration of this Contract and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

6.5 The Contractor Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal project management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.

6.6 Contractor agrees to comply with the following check writing and handling procedures:

(A) No blank checks are to be signed in advance.

(B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.

(C) Checks issued by City to Contractor shall be deposited into the appropriate bank account immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.

- 6.7 City reserves the right to request Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.
- 6.8 **[Insert the following sentence if your department will disallow the purchase of gift cards]** The use or purchase of gift cards is not allowable and reimbursable under this Contract.

VII. AUDIT

- 7.1 If Contractor expends \$750,000.00 or more of City dollars, provided pursuant to this Contract or any other City contract, then during the term of this Contract, the Contractor shall have completed an independent audit and shall submit the required report within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish the Managing City Department a copy of the audit report, including a corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within thirty (30) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the 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 the Managing City Department within a period of ten (10) calendar days upon the Contractor's receipt of the report.

- 7.2 Contractor agrees that if Contractor receives or expends more than \$750,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (Uniform Guidance) and Contractor shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana. Contractor may submit reports through the following website: <http://harvester.census.gov/sac/> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

Upon completion of Form SF-SAC, Contractor may submit the completed report by mail to:

Federal Audit Clearinghouse
 Bureau of the Census
 1201 E. 10th Street
 Jeffersonville, Indiana 47132

Contractor agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement shall be made within thirty (30) calendar days of written notification regarding the need for reimbursement.

- 7.3 If Contractor expends less than \$750,000.00 of City dollars during the term of this Contract, then the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed nine (9) months immediately succeeding the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.
- 7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each project funded by or through the City.
- 7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Contract at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The 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 and shall continue to make available the 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 three (3) 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 expiration, save and except when there is litigation or if the audit report covering such Contract has not been accepted, then the 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, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

The City may, in its sole and absolute discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and the Contractor shall abide by such requirements.

- 7.6 When an audit or examination determines that the Contractor has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the 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, the Contractor will promptly refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department 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 the City. If 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 cashier's check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the Contractor is forbidden from reducing 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 the Contractor and shall not be paid from any Project funds received by the Contractor under this Contract.

7.7 If the City determines, in its sole discretion, that Contractor 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 the Contractor pay for such audit from non-City resources.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, all policies, procedures, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and Project participants pertaining to the matters covered by this Contract.

8.2 The Contractor shall submit to the Managing City Department such reports as may be required by the City, or as may be required by the Grantor, if Grant funded, including the Contract Monitoring Report, which template is attached hereto and incorporated herein as Attachment IV. At the start of the Contract term, a Contract Monitoring Report containing projected monthly performance measures for the entire Contract term shall be developed and approved by designated Contract monitoring staff. Contractor shall submit a completed Contract Monitoring Report no later than the 15th day of every month which shall reflect the actual services delivered and outcomes achieved against the projected performance measures for all months preceding the submission. The Contractor ensures that all information contained in all required reports submitted to City is accurate and support documentation shall be maintained.

8.3 Contractor 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, and other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. **[The following sentence shall be inserted if applicable:** Additionally, if applicable, Contractor shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in Attachment VI, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed to each other pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.] Contractor 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, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 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 Contract. Upon expiration or early termination of this Contract, Contractor shall return to City all copies of materials related to the Project, including the Confidential Information.

8.4 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance.

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, the 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.

8.5 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. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

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 expiration or early termination of this Contract, if requested by the City. 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 Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.

8.6 Ownership of Intellectual Property. Contractor and City agree that the Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.

8.7 Within a period not to exceed 90 days from the expiration or early termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

8.8 Contractor shall provide to the Managing City Department all information requested by the Managing City Department 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 (name, title, address, telephone number, fax number and e-mail address);
- (B) Current Bylaws and Charter;

- (C) Terms of Officers;
- (D) Amendments to Bylaws;
- (E) Schedule of anticipated board meetings for current Fiscal Year;
- (F) Minutes of board meetings that are approved by the Contractor's board; and
- (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

8.9 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 12.3 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 completed Certificate(s) of Insurance to the Managing City Department, which shall be clearly labeled "*insert name of project/contract*" 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 be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Managing City Department. 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 whereby 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 below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury d. Sexual Abuse / Molestation** 	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
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
** Required for projects involving services to children	

(D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a

certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor 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 Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Contract for all purposes.

(E) 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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

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

- Name 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, or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

(G) 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.

(H) 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 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.

(I) 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.

(J) 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.

(K) 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.

(L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

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 CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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.

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 CONTRACT.

XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

THIS SECTION INTENTIONALLY LEFT BLANK

XII. APPLICABLE LAWS

- 12.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition, Contractor agrees that:

(A) Contractor shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by Contractor

[insert next section if Contract is funded with federal grant money and if Contract is in excess of \$150,000]

(B) Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this Contract and the appropriate EPA Regional Office. Additionally, Contractor agrees to include these requirements in each subcontract to this Contract exceeding \$150,000 financed in whole or in part with federal funds.

[insert next section if Contract is funded with federal grant money]

(C) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Contractor agrees to include within its subcontracts a requirement that its subcontractors comply with this provision.

[insert next section if Contract is funded with federal grant money]

(D) Contractor has tendered to the City a Certification of Restrictions on Lobbying in compliance with the Byrd Anti-lobbying Amendment (31 U.S.C. §1352), and any applicable implementing regulations, if Contractor applied for or bid for an award exceeding \$100,000.00 from the City.

12.3 All of the work performed under this Contract by Contractor 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. 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/slrn/recordspubs/gr.html>
- Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>
- Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
- Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
- Texas Local Government Code can be found at <http://www.statutes.legis.state.tx.us/>

In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

12.4 **[The following sentence shall be inserted as necessary]** 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 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.

12.5 The Contractor warrants that any and all taxes that the Contractor 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 Contract. The Contractor 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.

12.6 Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and all regulations thereunder.

12.7 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if Contractor receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), Contractor shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of Contractor receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state's economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.

12.8 Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Contract as they may be promulgated.

12.9 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. If using City of San Antonio General Funds, expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.

12.10 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T thirty (30) days after Internal Revenue Service (IRS) deadlines for completion. If filing an extension, Contractor shall notify the City in writing of the extension and the anticipated date of filing with the IRS. Contractor shall submit the 990 or 990T to the Managing City Department no later than 30 days after the date of filing the form for which Contractor received an extension.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

13.1 The 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 the Contractor or the City. For breach or violation of this warrant, the 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.

13.2 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.

13.3 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.

13.4 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.

13.5 Contractor acknowledges that it is informed that 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 "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that neither the 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, the 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 is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. TERMINATION

14.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if the Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract in whole or in part by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the tenth (10th) day following the day on which such notice is sent). The 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 the 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, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.

14.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project would not produce desired results commensurate with the

further expenditure of funds or if the City has insufficient revenue to satisfy the City's liabilities hereunder. Such termination by City shall specify the date thereof, which date shall not be sooner than the thirtieth (30th) day following the day on which notice is sent. The 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 the thirtieth (30th) day following the day on which notice is sent. The 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 the 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, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.

- 14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The 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 the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.
- 14.4 Should the Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City's sole and absolute discretion, be grounds for termination for cause.

XV. PROHIBITION OF POLITICAL ACTIVITIES

- 15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, 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.
- 15.2 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.
- 15.3 The prohibitions set forth in sections 15.1 and 15.2 of Article XV 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.

15.4 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 the Managing City Department. Contractor shall list the name and number of a contact person from the Managing City Department on the statement that Contractor's personnel can call to report said violations.

15.5 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 the City's discretion, be withheld until the situation is resolved.

15.6 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.

XVI. PERSONNEL MANAGEMENT

16.1 The 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.

16.2 Contractor is permitted to pay its full time employees funded through this Contract for the total number of holidays authorized by the City Council for City employees. If the 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.

16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department.

16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization funded through this Contract.

16.5 The Contractor agrees to provide the 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.

16.6 At the sole discretion of the Director of the Managing City Department, 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, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. 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.

16.7 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.

XVII. ADVERSARIAL PROCEEDINGS

17.1 Contractor agrees to comply with the following special 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 the City or any other public entity; and
- (B) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

18.1 Contractor shall publicly acknowledge that this Project is supported by the City of San Antonio, Department of Human Services. Throughout the term of this Contract, Contractor agrees to include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by Contractor. Contractor shall obtain the City's prior approval of the language and logo, as applicable, to be used.

XIX. EQUIPMENT

19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at Contract's expiration or early termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon expiration or early termination of this Contract. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.

19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.

19.3 Contractor shall maintain records on all items obtained with City funds to include:

- (A) A description of the equipment, including the model and serial number, if applicable;
- (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
- (C) An indication of whether the equipment is new or used;
- (D) The vendor's name (or transferred from);
- (E) The location of the property;
- (F) The property number shown on the property tag; and
- (G) A list of disposed items and disposition

19.4 The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police

Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the equipment/property having been lost, stolen, missing, damaged and/or destroyed. The report submitted by the Contractor to the Managing City Department shall minimally include:

- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.5 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.

19.6 The Contractor shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

XX. TRAVEL

20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present and approved in the budget.

20.2 Contractor agrees that mileage reimbursement paid to Contractor's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with IRS rules. Contractor further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City. Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

20.3 Contractor agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Contract, Contractor shall 1) provide City with detailed documentation of such business travel expense(s), 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such, and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

21.1 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.

XXII. DEBARMENT

22.1 Contractor 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.

22.2 Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the Contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXIII. ASSIGNMENT

23.1 Contractor shall not assign nor transfer Contractor's interest in this Contract or any portion thereof without the written consent of the City Council of San Antonio, 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.

XXIV. AMENDMENT

24.1 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 Director of the Managing City Department **[insert, if applicable]** or designee 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, and in the following circumstances:

- (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 increasing funding and 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 Scope of Work and SA2020 Scorecard set forth in Attachment I hereto due to the adjustment described in subsection (A) of this Section or for any other reason, so long as the terms of the amendment are reasonably within the parameters set forth in the original Scope of Work and SA2020 Scorecard;
- (C) budget shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged (these modifications may be accomplished through Budget revisions);
- (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 Director of the Managing City Department;
- (E) reduction of the total Contract amount in order to comply with the match requirement expenditure ratio set forth in Section 3.3, and to amend the budget accordingly which is set forth in Attachment II hereto. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 24.1(E); or
- (F) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

XXV. SUBCONTRACTING

25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City and Grantor of the grant source, if so required by said Grantor.

25.2 Contractor must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is

found that all applicable local, state and federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.

- 25.3 Any work or services for sub-contracting hereunder, shall be sub-contracted 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 Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.
- 25.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program.

XXVI. OFFICIAL COMMUNICATIONS

- 26.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and delivered in person, mailed by overnight or express service or 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

Contractor:

Executive Director/CEO/President
 Agency Name
 Agency Address
 San Antonio, Texas

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.

XXVII. VENUE

- 27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, 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. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

XXVIII. GENDER

- 28.1 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.

XXIX. AUTHORITY

- 29.1 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 Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in its 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 Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

XXX. LICENSES AND TRAINING

30.1 Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided hereunder.

XXXI. INDEPENDENT CONTRACTOR

31.1 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 the City shall in no way be responsible therefor, 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.

31.2 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.

31.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor 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 Contractor.

XXXII. SEVERABILITY

32.1 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 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.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered "high profile" as that term is defined in the City of San Antonio Procurement Policy and Procedures Manual.

33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the City from the time the City begins discussions or negotiations, and ending on the 30th calendar day 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. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

33.2 Contractor acknowledges that the City has identified this Contract as high profile.

33.3 Contractor warrants and certifies, and 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 signer of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXXIV. ENTIRE CONTRACT

34.1 This Contract and its attachments, if any, 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:

CONTRACTOR:

[insert Contractor name]

Melody Woosley, Director
Department of Human Services

[insert name and title]

APPROVED AS TO FORM:

Assistant City Attorney

Board President (if required by Agency)

ATTACHMENTS

Attachment I – Scope of Work and SA2020 Scorecard
Attachment II – Budget
Attachment III – Funding Guide
Attachment IV – Contract Monitoring Report
Attachment V – Grantor Contract [include if applicable and referenced in the Contract]
Attachment VI – HIPAA Business Associate Agreement [include if applicable and referenced in the Contract]

WITNESSETH:**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and _____, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a _____ contract _____ services ("Service Contract"), effective October 1, 2015; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

- (9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
- (11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2013, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*

M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the

Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2015, by the **City of San Antonio**, signing by and through its Director of the Department of Human Services.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Melody Woosley

Print Title: Director, Department of Human Services Print Title:

BUSINESS ASSOCIATE:

By: _____

Print Name:

APPROVED AS TO FORM:

Assistant City Attorney

HUMAN & WORKFORCE DEVELOPMENT SERVICES
CONSOLIDATED FUNDING REPORT
ADOPTED FY 2016 ALLOCATIONS

Agency Name	Program Name	Consolidated Funding Process	Emergency Solutions General Fund	Housing Opp. for Persons with AIDS (HOPWA)	Adopted FY 2016
		General Fund	Grant (ESG)		
EDUCATION					
After School Challenge					
Edgewood (All Star)	After School Challenge Program		168,750 ¹		168,750
Harlandale (Boys and Girls)	After School Challenge Program		375,000		375,000
East Central ISD	After School Challenge/Tutoring Program		124,200		124,200
Northeast ISD	After School Challenge Program		317,900		317,900
Northside ISD	Learning Tree/Math & Science Initiative		221,000		221,000
San Antonio ISD	After School Challenge Program		1,412,780		1,412,780
South San Antonio ISD	After School Challenge Program		75,000		75,000
Southwest ISD	Inspiring Leaders After School Challenge Program		40,600		40,600
Total After School Challenge			\$2,735,230	\$0	\$0
Early Childhood Support					
Alamo Public Telecommunications (KLRN)	Early On School Readiness		150,000		150,000
AVANCE	Parent-Child Education Program		460,531		460,531
AVANCE	Early Beginnings (Early On)		150,000		150,000
Family Service Association	Family Strengthening and Kindergarten Readiness		221,254		221,254
Northside Independent School District	Family Literacy/Early On Readiness		47,025		47,025
Respite Care	Respite Care Developmental Daycare		121,222		121,222
San Antonio Public Library Foundation	Little Red Wagon Early On		27,638		27,638
YWCA of San Antonio	Early On		58,286		58,286
YWCA of San Antonio	Parents and Children Together (PACT)		22,912		22,912
Total Childhood Support			\$1,258,868	\$0	\$0
Youth Services					
Alamo Community College District	Challenger Center - STEM		40,000		40,000
Boys and Girls Club	College Readiness and Enrollment		51,851		51,851
Catholic Charities	After School & Summer Youth		39,355		39,355
City Year	Whole School Whole Child		50,000		50,000
Communities in School	Middle School Student Success Program		142,500		142,500
Ella Austin Community Center	Youth Development STAARS Project		56,000		56,000
Family Service Association	Youth College and Career Opportunities		272,508		272,508
Good Samaritan	College and Career Readiness Program		137,459		137,459
Healy Murphy Center	Youth Training Project		318,250		318,250
Joven	Leaders of America		162,450		162,450
Joven	Creando La Vision		95,000		95,000
Martinez Street Women's Center	Girl Zone		32,415		32,415
P16 Plus	College and Career Readiness Program		53,001		53,001
P16 Plus	Destination College		68,750		68,750
P16 Plus	SA Kids Attend to Win		46,999		46,999
P16 Plus	San Antonio Youth Commission		25,000		25,000
Presa Community Center	Southside Kids Involved In Learning Leadership Skills		47,727		47,727
Salvation Army	Boys and Girls Club Education Project		49,626		49,626
San Antonio Youth Literacy	SAYL's Reading Buddy Program		50,000		50,000
UTSA	Prefreshman Engineering Program		36,947		36,947
YMCA	Out of School Time		90,000		90,000
YMCA	Y Teens		100,000		100,000
Total Youth Services			\$1,965,838	\$0	\$0
FAMILY WELL-BEING					
Basic Needs & Homeless Prevention					
Any Baby Can	Prescription Assistance Program		57,553		57,553
Project MEND	Medical Equipment Reuse Program		85,500		85,500
Respite Care	Davidson Respite House		76,010		76,010
San Antonio Food Bank	Kids café		47,500		47,500
San Antonio Independent Living Services (SAILS)	Gateway to Abilities Program		95,000		95,000
San Antonio Metropolitan Ministries	Rapid Rehousing Program			431,036	431,036
Society of St. Vincent De Paul	Rapid Re-housing			47,500	47,500
St. Peter St. Joseph Children's Home	Project Ayuda ESG Program			47,500	105,042
Total Basic Needs & Homeless Prevention			\$409,063	\$536,078	\$0
Homeless Transformation					
Alamo Area Resource Center	Transportation			174,151	174,151
Alamo Area Resource Center	Housing Works			120,222	120,222
Beat AIDS	Case Management			47,500	47,500
Center for Health Care Services	In House Wellness Program				474,217 ²
Center for Health Care Services	Prospects Courtyard			1,112,971	1,112,971
Center for Health Care Services	Restoration Center			1,250,000	1,250,000
Haven for Hope	Operations			1,000,000	1,000,000
Haven for Hope	Prospects Courtyard Security			1,103,916	1,103,916
Haven for Hope	Residential and Support Services			922,000	922,000
Family Violence Prevention Services	Community Based Counseling			140,000	140,000
San Antonio AIDS Foundation	Transitional Housing Program				130,915
San Antonio AIDS Foundation	Long Term Tenant Based Rental Assistance				319,731
San Antonio AIDS Foundation	Congregate Hot Meal Program for People with HIV/AIDS				95,900
San Antonio AIDS Foundation	Nursing Facility Based Housing Operations				291,962
San Antonio Food Bank	Community Kitchen				1,057,599
Total Homeless Transformation			\$849,177	208,422	\$1,180,381
			\$6,852,281	\$208,422	\$8,241,084

¹ FY 2016 Adopted Funding includes \$2,735,230 in designated funding for After School Challenge.² FY 2016 Adopted Funding includes \$5,863,104 in designated funding for Haven for Hope. Total General Fund & Grant allocation for Haven for Hope and related campus partners is \$7,060,703.

HUMAN & WORKFORCE DEVELOPMENT SERVICES
CONSOLIDATED FUNDING REPORT
ADOPTED FY 2016 ALLOCATIONS

Agency Name	Program Name	Consolidated Funding Process General Fund	Emergency Solutions Grant (ESG)	Housing Opp. for Persons with AIDS (HOPWA)	Adopted FY 2016
FAMILY WELL-BEING (CONTINUED)					
VITA/Financial Security					
Catholic Charities	VITA Guadalupe Community Center	33,989			33,989
Family Service Association	VITA Free Tax Preparation and Asset Building	15,000			15,000
YWCA of San Antonio	VITA	30,000			30,000
YWCA of San Antonio	SEED	28,500			28,500
Total VITA/Financial Security		\$107,489	\$0	\$0	\$107,489
COMMUNITY SAFETY NET					
At-Risk Youth Behavior Prevention					
American Indians	Rites of Passage - Fatherhood Initiative	47,500			47,500
Big Brothers Big Sisters	Inspire U Workplace Youth Mentoring Program	113,349			113,349
Boys and Girls Club	At Risk	461,915			461,915
Boys Town	Community Safety Net	95,000			95,000
Communities in School	XY - Zone Program	101,119			101,119
Family Service Association	Youth Against Gang Activity	109,161			109,161
Girl Scouts of Southwest Texas	Westside Girl Scout Leadership Experience (GSLE)	174,230			174,230
Good Samaritan	At-Risk Behavior Prevention	87,923			87,923
Roy Maas	Safe Beds For Youth	27,600			27,600
San Anto Cultural Arts	Youth Programs	33,585			33,585
Seton Home	Safe Shelter	49,778			49,778
YWCA of San Antonio	Teen Volunteer Program	39,060			39,060
YWCA of San Antonio	Mi Carrera	44,650			44,650
YWCA of San Antonio	Positive Youth Development	22,563			22,563
Total At-Risk Youth Behavior Prevention		\$1,407,433	\$0	\$0	\$1,407,433
Reduce Domestic Violence/Child Abuse Prevention					
Alamo Area Rape Crisis Center	Sexual Assault Crisis & Emergency Services	73,356			73,356
Any Baby Can	Case Management	42,322			42,322
Bexar County Family Justice Center Foundation	Victims Empowerment Counseling Program	81,025			81,025
Bexar County Family Justice Center Foundation	Dream Center	58,416			58,416
Child Advocates of San Antonio	COSA & CASA: Creating A Safer Community	50,000			50,000
Child Safe	Client Services	75,000			75,000
Family Endeavors	Fairweather Family Lodge	28,500			28,500
Family Violence Prevention Services	Battered Women and Children's Shelter	200,701			200,701
Seton Home	A Healthy Home	85,431			85,431
Reduce Domestic Violence/Child Abuse Prevention		\$694,751	\$0	\$0	\$694,751
Senior Services					
Bihl Haus Arts	GO! Arts Program Expansion	42,000			42,000
Christian Senior Services	Senior Companion Program	54,150			54,150
Good Samaritan	Senior Services	33,615			33,615
OASIS	OASIS	90,000			90,000
San Antonio Food Bank	Project Hope	500,000			500,000
Urban 15 Group	The Cultivation Program	33,374			33,374
YMCA	Active Older Adults	292,600			292,600
YWCA of San Antonio	Senior Connection	82,650			82,650
Total Senior Services		\$1,128,389	\$0	\$0	\$1,128,389
ECONOMIC COMPETITIVENESS					
Long Term Job Training/Short Term Services					
Alamo Community College District	Seguir Adelante Program	204,413			204,413
Chrysalis Ministries	Welcome Home Job Readiness Program	42,000			42,000
Dress for Success	Enhancing Economic Competitiveness	300,000			300,000
Each One Teach One of San Antonio	Adult Literacy and GED Readiness	50,000			50,000
Goodwill Industries	Learn While You Earn	225,000			225,000
Project QUEST, Inc.	Project QUEST	1,521,750			1,521,750
SA Youth	Youth Build Program	125,000			125,000
Long Term Job Training/Short Term Services		\$2,468,163	\$0	\$0	\$2,468,163
TOTAL DELEGATE AGENCIES		\$19,027,505	\$744,500	\$1,180,381	\$20,952,386

Contract # 4600010994

**AMENDMENT #15
OPERATING AGREEMENT
BETWEEN
CITY OF SAN ANTONIO
AND
HAVEN FOR HOPE OF BEXAR COUNTY
(FY 16 FUNDING)**

This is an amendment (hereinafter referred to as “**Amendment No. 15**”) to that certain Operating Agreement entered into as of the 30th day of April, 2009, between The Haven for Hope of Bexar County, a Texas non-profit corporation, located at 1 Haven for Hope Way, San Antonio, Texas 78207 (“**Operator**”) acting by and through its Chief Executive Officer, and the City of San Antonio, a Texas municipal corporation and a home rule municipality (the “**City**”) acting by and through its City Manager or authorized designee pursuant to City of San Antonio Ordinance No. 2009-04-30-0335, passed and approved on April 30, 2009 and effective on April 30, 2009 relating to activities to be performed, responsibilities to be accepted and authority to be exercised with regard to the operation of a human services campus for the homeless (the “**Campus**”) known as Haven for Hope (as amended to date, hereinafter referred to as “Agreement”).

This Amendment No. 15 is entered into by and between the City acting by and through its designated representative, the Director of the Department of Human Services, pursuant to Ordinance No. 2015-09-10-____, dated September 10, 2015, and Operator.

WHEREAS, the City has leased to Operator premises upon which a homeless campus (the “**Campus**”) is situated pursuant to that certain Lease between the City and the Operator, dated March 6, 2008 and authorized pursuant to Ordinance 2008-03-06-0164, together with all attachments, appendices and exhibits; and

WHEREAS, the Operator manages and leads the day to day operation of the Campus on a collaborative basis with various service providers; and

WHEREAS, the City has allocated funding for FY 16 operations, Prospects Courtyard (PCY) security and janitorial services and residential and support services at the Campus;

NOW THEREFORE:

City and Operator agree as follows:

1. The document entitled “**Schedule C1 (Amended by Amendment #15)**” attached hereto and incorporated herein as Exhibit I, supplants any prior Schedule “C1,” and all references in the

Agreement to Schedule “C1” now refers to the attached “**Schedule C1 (Amended by Amendment #15)**.”

2. For FY 2016, Operator agrees to provide, oversee, administer and carry out all activities and services as set out in the Agreement, and any amendments thereto, and in compliance with the FY 2016 Scopes of Work and SA2020 Scorecards applicable to each project and the Haven for Hope FY 2016 Performance Measures Definitions affixed hereto and incorporated herein for all purposes as:

Exhibit II – FY 2016 Scope of Work and SA2020 Scorecard (Haven for Hope General Operations)

Exhibit III – FY 2016 Scope of Work and SA 2020 Scorecard (Prospects Courtyard Security and Janitorial Services)

Exhibit IV – FY 2016 Scope of Work and SA2020 Scorecard (Haven for Hope Residential and Support Services)

Exhibit VI – Haven for Hope FY 2016 Performance Measures Definitions

Operator shall generate from the Homeless Management Information System and submit to the City’s Department of Human Services a completed Haven Combined Contract Monitoring Report which reflects the outcomes of measures set out in the SA2020 Scorecards. Attached hereto and incorporated herein for all purposes as Exhibit “V” is the form FY 2016 Combined Contract Monitoring Report. For FY 2016, Operator agrees to submit to the completed report generated from HMIS no later than the tenth (10th) business day of the month, which extends the period specified in Section 7.2 of the Agreement.

3. By and through this Amendment, the City will reimburse Operator for costs incurred in accordance with the budgets approved by the City and attached hereto and incorporated herein for all purposes as Budget Attachments C1-16, C1-17 and C1-18 (the “**Budgets**”). It is specifically agreed that such reimbursement shall not exceed the individual amounts of \$1,000,000.00 for Haven for Hope General Operations, \$1,103,916.00 for Haven for Hope Prospects Courtyard Security and Janitorial Services and \$922,000.00 for Residential and Support Services, for a combined total amount of \$3,025,916.00 for the fiscal period from October 1, 2015 through September 30, 2016. Operator agrees that all requests for reimbursement shall be accompanied with documentation typically required by the Director of the City’s the Department of Human Services (“DHS”) to support such expenditure.
4. The parties shall negotiate and enter into HIPAA Business Associate Agreement using the form as shown in Attachment VII, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed to each other pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable

laws.

5. All other terms, conditions, covenants and provisions of the Agreement are hereby continued and shall remain in effect in their original form, except for the provisions modified by this Amendment No. 15.

Executed this the _____ day of _____, 2015.

CITY OF SAN ANTONIO:

OPERATOR:

Haven for Hope of Bexar County,
A Texas Non-Profit Corporation

By: Melody Woosley, Director
Department of Human Services

By: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

Exhibit I – Schedule C1 (Amended by Amendment #15)

Exhibit II – FY 2016 Scope of Work and SA2020 Scorecard (Haven for Hope General Operations)

Exhibit III – FY 2016 Scope of Work and SA2020 Scorecard (Prospects Courtyard Security and Janitorial Services)

Exhibit IV – FY 2016 Scope of Work and SA2020 Scorecard (Haven for Hope Residential and Support Services)

Exhibit V – Haven FY 2016 Contract Monitoring Report

Exhibit VI - Haven for Hope FY 2016 Performance Measures Definitions

Exhibit VI – HIPAA Business Associate Agreement Form

Exhibit I

Schedule C1
Operating Agreement Funding
 (amended by Amendment #15)

Date	Authorizing Ordinance	Funding AMDT	Funding	Period	Description / Purpose	Budget Attachment
09/17/09	2009-09-17-0727	AMDT #1	\$880,000	10/1/09 – 9/30/10	Initial Year Funding for Operations and Security	C1 - 1
04/15/10	2010-04-15-0329	AMDT #1	\$343,000	4/15/10 – 9/30/10	Prospects Courtyard Security	C1 - 2
09/16/10	2010-09-16-0788	AMDT #2	\$1,000,000 \$800,000	10/01/10 – 9/30/11 10/01/10 – 9/30/11	FY 2010 – 2011 Operations Prospects Courtyard Security (General Fund)	C1 - 3
09/16/10	2010-09-16-0788	AMDT #2	\$135,000	10/01/10 – 9/30/11	FY 2010 – 2011 Case Management (Emergency Shelter Grant)	C1 - 4
09/15/11	2011-09-15-0749	AMDT #6	\$1,000,000 \$925,122	10/01/11 – 9/30/12 10/01/11 – 9/30/12	FY 2011 – 2012 Operations Prospects Courtyard Security (General Fund)	C1 - 5
09/15/11	2011-09-15-0749	AMDT #6	\$135,000	10/01/11 – 9/30/12	FY 2011 – 2012 Case Management (Emergency Shelter Grant)	C1 - 6

Date	Authorizing Ordinance	Funding AMDT	Funding	Period	Description / Purpose	Budget Attachment
9/13/12	2012-09-13-0696	AMDT #9	\$1,000,000	10/01/12 – 9/30/13	FY 2012 – 2013 Operations	C1 – 7
9/13/12	2012-09-13-0696	AMDT #9	\$925,122	10/01/12 – 9/30/13	FY 2012 – 2013 Prospects Courtyard Security	C1 – 8
9/13/12	2012-09-13-0696	AMDT #9	\$922,000	10/01/12 – 9/30/13	FY 2012 – 2013 Residential and Support Services	C1 – 9
9/12/13	2013-09-12-0627	AMDT #13	\$1,000,000	10/01/13 – 9/30/14	FY 2013 – 2014 Operations	C1 – 10
9/12/13	2013-09-12-0627	AMDT #13	\$1,103,916	10/01/13 – 9/30/14	FY 2013 – 2014 Prospects Courtyard Security and Janitorial Services	C1 – 11
9/12/13	2013-09-12-0627	AMDT #13	\$922,000	10/01/13 – 9/30/14	FY 2013 – 2014 Residential and Support Services	C1 – 12
9/18/14	2014-09-18-0690	AMDT #14	\$1,000,000	10/01/14 – 9/30/15	FY 2014 – 2015 Operations	C1 – 13
9/18/14	2014-09-18-0690	AMDT #14	\$1,103,916	10/01/14 – 9/30/15	FY 2015 – 2015 Prospects Courtyard Security and Janitorial Services	C1 – 14
9/18/14	2014-09-18-0690	AMDT #14	\$922,000	10/01/14 – 9/30/15	FY 2014 – 2015 Residential and Support Services	C1 – 15

Date	Authorizing Ordinance	Funding AMDT	Funding	Period	Description / Purpose	Budget Attachment
9/10/14	2015-09-10-	AMDT #15	\$1,000,000	10/01/15 – 9/30/16	FY 2015 – 2016 Operations	C1 – 16
9/10/14	2015-09-10-	AMDT #15	\$1,103,916	10/01/15 – 9/30/16	FY 2015 – 2016 Prospects Courtyard Security and Janitorial Services	C1 – 17
9/10/14	2015-09-10-	AMDT #15	\$922,000	10/01/15 – 9/30/16	FY 2015 – 2016 Residential and Support Services	C1 – 18

WITNESSETH:**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and _____, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a _____ contract _____ services ("Service Contract"), effective October 1, 2015; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

- (9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
- (11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2013, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*

M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the

Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2015, by the **City of San Antonio**, signing by and through its Director of the Department of Human Services.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Melody Woosley

Print Title: Director, Department of Human Services Print Title:

BUSINESS ASSOCIATE:

By: _____

Print Name:

APPROVED AS TO FORM:

Assistant City Attorney

Contract # 460000 _____

STATE OF TEXAS §
COUNTY OF BEXAR §

**INTERLOCAL AGREEMENT
BETWEEN
CITY OF SAN ANTONIO
AND
THE CENTER FOR HEALTH CARE SERVICES**

This agreement ("Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as the "City"), acting by and through its Director of the Department of Human Services pursuant to Ordinance No. _____, dated September 10, 2015, and Bexar County Board of Trustees for Mental Health Mental Retardation Services d/b/a The Center for Health Care Services, a political subdivision of the State of Texas, acting by and through its duly authorized representative (hereinafter referred to as the "Contractor").

WHEREAS, both parties to this Agreement are political subdivisions of the State of Texas, and desire to enter into this Agreement in accordance with the provisions of the Interlocal Cooperation Act, being Chapter 791 of the Texas Government Code; and

WHEREAS, Contractor has the capability to provide indigent care and services to public inebriates; and

WHEREAS, City desires to improve the quality of indigent care in San Antonio and services to public inebriates through investment in public safety triage, detoxification, and outpatient treatment services ("Public Inebriate Services") as part of a public inebriate program ("Program") at its detoxification facility (the "Restoration Center"); and

WHEREAS, City and Contractor have come to an agreement regarding mutually advantageous terms for Contractor to provide Public Inebriate Services, and both desire that such agreement be memorialized herein.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 accomplishments of the tasks hereinafter described.

Section 1: Term

This Agreement will commence on October 1, 2015 and continue through September 30, 2016.

Section 2: Scope of Work

A. Contractor shall provide, oversee, administer, and carry out the following Public Inebriate Services at the Restoration Center in a manner satisfactory to the City and in compliance

with the Scope of Work attached hereto and incorporated herein for all purposes as Attachment I-A:

1. services as described in this Section to homeless individuals, persons with substance abuse disorders, participants engaged in the criminal justice system or referred by the Department of Human Services as a result of an offense or violation of law that have substance abuse and/or dependency issues; and
2. triage services that includes medical screening and assessment to determine the appropriate level of care; and
3. outpatient program services, which include individual and group counseling, case management services, chemical dependency education and various support activities, such as life skills training, that facilitate seeking and maintaining abstinence; and
4. uninterrupted services 24 hours a day, every day of the calendar year during the term and in accordance with all applicable standards of care.
5. in applicable cases, conduct intake in accordance with the procedure for the Public Sobering Unit at the Restoration Center, which is attached hereto and incorporated herein for all purposes as Attachment I – B, and provide safe sobering services as appropriate; and
6. overall coordination of services with all organizations offering welfare support at the Haven for Hope homeless campus.

B. Contractor shall provide a Program site facility, adequate in size for all of its participants and the activities described in this Section, all supplies for the Program and reasonable ancillary services at the site.

C. The parties agree that participation in the Program is subject to participant eligibility as evaluated by Contractor. The Contractor will coordinate detox/sobering services and long-term residential treatment with Haven for Hope.

Section 3: Payment

A. In consideration, City will reimburse Contractor for eligible costs incurred providing the Public Inebriate Services as part of its Program operations at the “Restoration Center” under this Agreement in an amount not to exceed \$1,250,000.00 in accordance with the Budget attached hereto and incorporated herein for all purposes as Attachment III and in compliance with the SA2020 Scorecard attached hereto and incorporated herein for all purposes as Attachment II. Eligible costs are defined as those costs which are necessary, reasonable and allowable under applicable federal, state and local law, including but not limited to those laws referenced in Section 7 of this Agreement, for the proper administration and performance of the services to be provided under this Agreement. All requested reimbursements must be consistent with the terms and provisions of the approved budgeted line items described in Attachment III of this Agreement, unless (a) a subsequent budget

revision has been approved and signed by the Director of the Department of Human Services in cases where the total Agreement Budget remains the same, or (b) an Agreement amendment has been approved and signed by the Director of the Department of Human Services pursuant to Section 24 of this Agreement in cases where there is an increase or decrease to the total Agreement Budget. Approved budget revisions and Agreement amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Agreement amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Program Budget, and all references in the Agreement to the budget shall mean the budget as revised through approved budget revisions or Agreement amendments. Contractor may confirm eligibility of a cost prior to making the expenditure if Contractor is uncertain.

B. The funding level of this Agreement is based on an allocation from the following funding sources:

\$1,250,000.00 General Fund

C. Contractor agrees that reimbursements of eligible expenses incurred under this Agreement and in compliance with the Budget attached hereto and incorporated herein for all purposes as Attachment III shall be made monthly. Contractor agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Department of Human Services.

D. If specific circumstances require an advance payment on this Agreement, Contractor must submit to the Director of the Department of Human Services a written request for such advance payment, including the specific reason for such request in the form prescribed by the City. Contractor agrees that the City shall not be obligated to pay for any advances requested. In those instances in which advance payments are authorized, the Director of the Department of Human Services may, in her sole discretion, approve an advance payment on this Agreement. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Department of Human Services no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Department of Human Services on a case-by-case basis, and (c) the decision by the Director of the Department of Human Services whether or not to approve an advance payment is final. For purposes of this Agreement, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:

1. Contractor's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that an advance payment check is available from the City, so long as services have been performed by the subject vendor.
2. The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where

Contractor's total deposits with said bank exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor's account balance to exceed FDIC limit shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. Contractor shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made pursuant to this and all other City contracts.

3. The City may deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Agreement term, or from a single subsequent monthly reimbursement the full amount previously advanced to Contractor. The City may consider factors such as projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.
- E. The Contractor shall submit to City all final requests for payment no later than 45 days from the termination date of this Agreement, unless Contractor receives written authorization from the Director of the Department of Human Services prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.
- F. Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor) under this Agreement.
- G. Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
 1. effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project; and
 2. supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
 3. an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to Agreement. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

- H. Contractor agrees that Contractor costs or earnings claimed under this Agreement will not be claimed under another contract or grant from another agency.
- I. Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Program funded by this Agreement. The Cost Allocation Plan and supportive documentation shall be included with Contractor's annual program budget prior to Contract execution by the deadline established by the City. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.
- J. Upon completion or termination of this Agreement, or at any time during the term of this Agreement, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Agreement, must immediately, upon receipt, be returned by Contractor to the City. Upon completion or termination of this Agreement, all advance payments exceeding allowable costs incurred during the Agreement term shall be immediately returned by Contractor to the City upon demand.
- K. Contractor agrees that prior to the payment of any funds under this Agreement, and throughout the term of this Agreement, Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. Contractor agrees that the City may immediately terminate this Agreement if the City finds, as solely determined by the City, that Contractor is in such unsatisfactory financial condition as to endanger performance under this Agreement. The City may consider evidence such as the apparent inability of Contractor to meet its financial obligations and items that reflect detrimentally on the credit worthiness of Contractor. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of Contractor, the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.
- L. It is expressly understood and agreed by the City and Contractor that the City's obligations under this Agreement are contingent upon the actual receipt of adequate general fund revenue or grant funds to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Agreement or should grant fund awards be reduced, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option and subject to City Council approval, either terminate this Agreement or reduce the Scope of Work and Payment accordingly.
- M. Contractor shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of the Department of Human Services.
- N. It is expressly understood and agreed that each party shall make payments for the performance of governmental functions or services from current revenues available to the paying party.

Section 4: Program Evaluation, Inspection and Record Keeping Requirements

- A. The Department of Human Services is assigned monitoring, fiscal control, and evaluation of City funded contracts. Therefore, at such times and in such form as may be required by the Department of Human Services, the Contractor shall furnish to the Department of Human Services such statements, records, data, all policies, procedures, and information and permit the City to have interviews with its personnel, board members and service recipients pertaining to the matters covered by this Agreement.
- B. The Contractor shall submit to the Department of Human Services such reports as may be required by the City. At the start of the Agreement term, projected monthly performance measures for the entire Contract term shall be developed and approved by designated Contract monitoring staff. Contractor shall enter data related to services required under this Agreement into the Homeless Information Management System (HMIS) no later than the 5th business day of each month, which shall reflect the actual services delivered and outcomes achieved against the projected performance measures for all months preceding the submission. The Contractor ensures that all information contained in all required reports submitted to City and entered into HMIS is accurate.
- C. Contractor agrees to use records and other information relating to the Restoration Center service recipients for the sole purpose of performing its obligations pursuant to this Agreement. Contractor may share information relating to service recipients in furtherance of public purposes such as promoting the health, welfare, and safety of the community to the extent that the information may be disclosed and is not required to be kept confidential under applicable federal and state laws, rules and regulations ("Service Recipient Information"). Additionally, if applicable, Contractor shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in Attachment IV, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed to each other pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws. Service Recipient Information is distinguishable from records or information otherwise provided by City to Contractor or exchanged between City and Contractor relating to this Agreement or contract performance ("City Documents"), and as such, Contractor agrees to secure the confidentiality of City Documents. If disclosure of City Documents is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of Department of Human Services prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Section including, but not limited to execution of confidential disclosure agreements, regarding the confidential information with Contractor's employees and subcontractors prior to any disclosure of the confidential information. This Section 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.

- D. 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Agreement, 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, the 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.
- E. 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. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.
- F. Contractor 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. Contractor further agrees to turn over to City all such records upon termination of this Agreement, if requested by the City. Contractor agrees that it shall not, under any circumstances, release any City Documents 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 Section 4.C.of this Agreement.
- G. Within a period not to exceed 90 days from the termination date of the Agreement; Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the City as related to this Agreement.
- H. Contractor agrees to retain all local government records, as defined in Section 201.003(8) of the Texas Local Government Code, created and maintained in the course and scope of the delivery of services under this Agreement for a retention period that shall be no less than the scheduled retention periods set forth in the Local Government Records Act of 1989 and any amendments thereto, found at <http://www tsl.state.tx.us/slrn/recordspubs/gr.html> and applicable for such records.
- I. The City shall have the authority during normal business hours to make physical inspections of the operating facility occupied by Contractor for the administration of this Agreement and

to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Agreement.

Section 5: Insurance

The Contractor and the City each maintain insurance or a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

Section 6: Indemnity

City and the Contractor acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

Section 7: Applicable Laws

- A. The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of the Agreement, and debarment and suspension actions.
- B. The Contractor understands that certain funds provided it pursuant to this Agreement are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Consequently, Contractor 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 in the performance of all services under this Agreement. These include the following:
 1. Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slrn/recordspubs/gr.html>, but only to the extent that the official records retention schedule shall identify the minimum period of retention of local government records (as defined in Section 201.003(8) of the Texas Local Government Code) created in the performance of this Agreement.
 2. Texas Government Code, Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>.
 3. Texas Local Government Code, Chapter 252 pertaining to purchasing and contracting authority of municipalities.

4. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services.
- C. In addition Contractor shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by Contractor.
- D. Contractor 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. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
 1. Title VII of the Civil Rights Act of 1964, as amended;
 2. Section 504 of the Rehabilitation Act of 1973, as amended;
 3. The Age Discrimination Act of 1975, as amended;
 4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 5. Fair Labor Standards Act of 1938, as amended;
 6. Equal Pay Act of 1963, P.L. 88-38; and
 7. All applicable regulations implementing the above laws.
- E. The Contractor warrants that any and all taxes that the Contractor 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 Contractor shall comply with all applicable local, state, and federal laws including, but not limited to:
 1. worker's compensation;
 2. unemployment insurance;
 3. timely deposits of payroll deductions;
 4. 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;
 5. Occupational Safety and Health Act regulations; and
 6. Employee Retirement Income Security Act of 1974, P.L. 93-406.
- F. Contractor agrees to comply with the Americans with Disabilities of 1990, 42 U.S.C. 12101 et seq., and all regulations thereunder.
- G. Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Agreement as they may be promulgated.

H. All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. If using City of San Antonio General Funds, expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.

Section 8: Conflict of Interest

- A. 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 Agreement. Contractor further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- B. 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.
- C. 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 Agreement shall:
 - 1. Participate in any decision relating to this Agreement 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
 - 2. Have any direct or indirect interest in this Agreement or the proceeds thereof.
- D. Contractor acknowledges that it is informed that 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 "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- E. Contractor 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.

Section 9: Termination

- A. Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if the Contractor 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 Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the tenth (10th) day following the day on which such notice is sent).
- B. Termination for Convenience - This Agreement may be terminated in whole or in part when the City determines that continuation of the Program 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 the thirtieth (30th) day following the day on which notice is sent. The Contractor shall also have the right to terminate this Agreement and specify the date thereof, which date shall not be sooner than the end of the thirtieth (30th) day following the day on which notice is sent.
- C. The 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 the 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, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- D. Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Agreement. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Agreement. The Contractor 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, in addition to retaining and utilizing any other remedies available to the City.

Section 10: Personnel Management

- A. The 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.
- B. Contractor is permitted to pay its full time employees funded through this Agreement for the total number of holidays authorized by the City Council for City employees. If the 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 Agreement.

- C. Contractor agrees that the job titles and descriptions set forth in the Budget (Attachment III) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Department of Human Services.
- D. Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization funded by this Agreement.
- E. The Contractor agrees to provide the 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 Agreement.
- F. At the sole discretion of the Director of the Department of Human Services, 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:
 - 1. To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Agreement;
 - 2. To serve as a juror;
 - 3. To attend the funeral of someone in the immediate family. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. 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
 - 4. To attend seminars or workshops;
- G. 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 Program in a non-supervisory position.

Section 11: Adversarial Proceedings

Contractor agrees to comply with the following special provisions:

- 1. 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; and

2. Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

Section 12: City-Supported Project

Contractor shall publicly acknowledge that the services provided by Contractor under this Agreement are supported by the City as directed by the Department of Human Services. Throughout the term of this Contract, Contractor agrees to include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by Contractor. Contractor shall obtain the City's prior approval of the language and logo, as applicable, to be used.

Section 13: No Use of Funds for Religious Activities

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.

Section 14: Debarment

- A. Contractor 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.
- B. Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Section 17 herein, if, at any time during the term of the Agreement, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

Section 15: Sub-contracting and Assignment

- A. Any other clause of this Agreement to the contrary notwithstanding, none of the work or services covered by this Agreement shall be assigned without the prior written approval of City, and if applicable, the Grantor of the grant. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.
- B. Any other clause of this Agreement to the contrary notwithstanding, none of the work or services covered by this Agreement shall be sub-contracted without the prior written approval of City, and if applicable, the Grantor of the grant. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written contract or agreement 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 sub-contractors with this Agreement shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.

C. Contractor must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, state and federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Agreement, and as such, this Agreement will be subject to termination in accordance with the provisions hereof.

Section 16: Relationship of Parties

A. 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.

B. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

C. Nothing in this Agreement, express or implied, shall be construed to confer rights, remedies or claims on any party other than the parties hereto.

Section 17: Notices

Notices to City required or appropriate under this Agreement shall be deemed sufficient if in writing and delivered in person, or mailed, registered or certified mail, postage prepaid, and addressed to:

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

or to such other address as may have been designated in writing by the Director of the Department of Human Services of the City of San Antonio from time to time. Notices to Contractor shall be deemed sufficient if in writing and delivered in person, or mailed, registered or certified mail, postage prepaid, and addressed to Contractor at:

The Center for Health Care Services
President and CEO
3031 IH 10 West
San Antonio, Texas 78201

or at such other address on file with the City Clerk as Contractor may provide from time to time in writing to City.

Section 18: Approval of the City

Whenever this Agreement calls for approval by City, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of the Department of Human Services of the City, or her designee, unless City Council approval is required.

Section 19: Venue

Contractor and City agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, 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. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar, County, Texas.

Section 20: Gender

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.

Section 21: Licenses And Training

Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Agreement, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

Section 22: Independent Contractor

A. 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 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.

- B. 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.
- C. Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of the Contractor 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 Contractor.

Section 23: Severability

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.

Section 24: Entire Agreement; Amendment

This written Agreement, together with the authorizing ordinance or ordinances constitutes the, entire agreement, with respect to the subject matter hereof, with any other written or parol agreement between the City and Contractor being expressly waived by Contractor. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed and agreed to by all the parties hereto. It is understood that the Charter of the City requires that all contracts and agreements with the City be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance; provided, however, the Director of the Department of Human Services shall have the authority to execute an amendment of this Agreement without the necessity of seeking any further approval by the City Council of the City, if permitted by all applicable local, state, and federal laws, and in the following circumstances:

- A. an increase in funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Agreement 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 and increasing Agreement funding during the term of this Agreement shall not exceed the foregoing amount; or

B. modifications to the scope of services or SA 2020 Scorecard, as long as the terms of the amendment are reasonably within the parameters set forth in Section 2 of this Agreement; or

C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in Section 3 (A) of this Agreement remains unchanged (these modifications may be accomplished through Budget revisions).

Section 25: Authority

Each of the signers of this Agreement hereby represents and warrants that they have authority to execute this Agreement on behalf of each of their governing entities and to bind the respective entities to all of the terms, conditions, provisions and obligations herein contained. This Agreement shall be signed in duplicate originals so that each Party hereto shall have an original.

EXECUTED this _____ day of _____, 2015, the **EFFECTIVE DATE**.

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

**BEXAR COUNTY BOARD OF TRUSTEES
FOR MENTAL HEALTH MENTAL
RETARDATION SERVICES D/B/A THE
CENTER FOR HEALTH CARE SERVICES**

By: _____
Melody Woosley, Director
Department of Human Services

By: _____
Leon Evans, President and CEO

Approved as to Form:

Assistant City Attorney

Attachment I – A – Scope of Work
Attachment I – B - General Procedures for Intake and Admissions
Attachment II – SA2020 Scorecard
Attachment III – Budget
Attachment IV – HIPAA Business Associate Agreement

WITNESSETH:**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and Bexar County Board of Trustees for Mental Health Mental Retardation Services d/b/a The Center for Health Care Services, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into an interlocal agreement to provide public safety triage, detoxification, and outpatient treatment services ("Service Contract"), effective October 1, 2015; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected Individual and the U.S. Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2014, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

- H. **Survival.** The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.
- I. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION.** BA and the Covered Entity acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.
- M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2015.

COVERED ENTITY
City of San Antonio

BUSINESS ASSOCIATE:
The Center for Health Care Services

Melody Woosley, Director
Department of Human Services

Leon Evans, President and CEO

APPROVED AS TO FORM:

Shreya Shah
Assistant City Attorney

Contract # 460000

STATE OF TEXAS §
COUNTY OF BEXAR §

**INTERLOCAL AGREEMENT
BETWEEN
CITY OF SAN ANTONIO
AND
THE CENTER FOR HEALTH CARE SERVICES**

This agreement ("Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as the "City"), acting by and through its Director of the Department of Human Services pursuant to Ordinance No._____, dated September 10, 2015, and Bexar County Board of Trustees for Mental Health Mental Retardation Services d/b/a The Center for Health Care Services, a political subdivision of the State of Texas, acting by and through its duly authorized representative (hereinafter referred to as the "Contractor").

WHEREAS, both parties to this Agreement are political subdivisions of the State of Texas, and desire to enter into this Agreement in accordance with the provisions of the Interlocal Cooperation Act, being Chapter 791 of the Texas Government Code; and

WHEREAS, the City desires to contract with Contractor for the day-to-day operation of the indoor / outdoor shelter area (“Prospects Courtyard”) and to fund a portion of the operations of a mental health dormitory (“In-House Wellness Program”) at the human services campus for the homeless known as Haven for Hope (“Campus”) as part of the wide range of transformational services offered to meet the needs of San Antonio’s homeless community; and

WHEREAS, it is proposed that Prospects Courtyard operations at the Campus be conducted on a collaborative basis with other providers under the management and leadership of Contractor; and

WHEREAS, the Mental Health Unit will include as components an 80 bed dormitory residence, a day treatment program and a mental health clinic to be funded through this Agreement and by funding Contractor and private donors; and

WHEREAS, City and Contractor have come to an agreement regarding mutually advantageous terms for Contractor to operate Prospects Courtyard and the In-House Wellness Program, and both desire that such agreement be memorialized herein;

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 accomplishments of the tasks hereinafter described.

Section 1: Term

This Agreement will commence on October 1, 2015 and continue through September 30, 2016.

Section 2: Scope of Work

A. Contractor shall provide, oversee, administer, and carry out the following activities and services in a manner satisfactory to the City and in compliance with the following Scope of Work and the attachments to this Agreement:

1. Manage and operate Prospects Courtyard and the 80 bed dormitory residence in the In-House Wellness Program 24 hours a day, 7 days a week;
2. Provide psychiatric day treatment services, subject to availability of funding, for those In-House Wellness Program members who reside in the 80-bed dormitory residence for up to 6 hours per day, Monday through Friday, and 2 hours per day on Saturdays;
3. Operate a walk-in psychiatric outpatient clinic for In-House Wellness Program residents and other homeless individuals at Prospects Courtyard;
4. Allow entry and offer safe sleeping and coordination of services in the main Prospects Courtyard, including provision of meals, access to showers and other hygiene needs, to men and women over the age of 17, in compliance with the Scope of Work attached hereto and incorporated herein for all purposes as Attachment I-A. The parties agree the Contractor is not an insurer of the safety of any third party but shall provide a reasonable sleeping environment to the extent of available resources provided under this Agreement;
5. Develop and follow procedures for entry and intake at the main Prospects Courtyard, determining specificity as needed, and in compliance with those General Procedures attached hereto and incorporated herein for all purposes as Attachment I-B;
6. Identify 80 individuals who have been residing at the Prospects Courtyard, or who were formerly homeless but currently in hospitals, psychiatric facilities, and/or jails, and who have been screened for, and are in need of, psychiatric outpatient treatment for the purpose of admitting them to the 80-bed In-House Wellness Program. Contractor shall operate the In-House Wellness Program in compliance with the Scope of Work for the In-House Wellness Program, attached hereto and incorporated herein for all purposes as Attachment I-C;
7. Provide City with developed procedures in writing, and submit revised procedures as they are modified;
8. Coordinate with Haven for Hope of Bexar County in order to facilitate the provision of security reasonable and necessary for the safety and welfare of individuals receiving services in Prospects Courtyard (PCY) and the In-House Wellness Program and for the protection of improvements, fixtures, inventory and equipment located therein against crime, including theft, burglary, graffiti and vandalism;
9. Hire staff consistent with the personnel and line items listed in the Budgets, as applicable, attached to this Agreement; and
10. Provide additional services, as necessary, appropriate and agreed upon with Haven for Hope of Bexar County, to assist in the transformation process for the homeless.

Section 3: Payment

A. In consideration, City will reimburse Contractor for eligible costs incurred under this Agreement in an amount not to exceed \$1,587,188.00 in accordance with the applicable Budget attached hereto and incorporated herein for all purposes as Attachment III and in compliance with the Balanced Scorecard Performance Plan Scorecard attached hereto and incorporated herein for all purposes as Attachment II. Eligible costs are defined as those costs which are necessary, reasonable and allowable under applicable federal, state and local law, including but not limited to those laws referenced in Section 7 of this Agreement, for the proper administration and performance of the services to be provided under this Agreement. All requested reimbursements must be consistent with the terms and provisions of the approved budgeted line items described in Attachment III of this Agreement, unless (a) a subsequent budget revision has been approved and signed by the Director of the Department of Human Services in cases where the total Agreement Budget remains the same, or (b) an Agreement amendment has been approved and signed by the Director of the Department of Human Services pursuant to Section 24 of this Agreement in cases where there is an increase or decrease to the total Agreement Budget. Approved budget revisions and Agreement amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Agreement amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Budget, and all references in the Agreement to the budget shall mean the budget as revised through approved budget revisions or Agreement amendments. Contractor may confirm eligibility of a cost prior to making the expenditure if Contractor is uncertain.

B. The funding level of this Agreement is based on an allocation from the following funding sources:

\$1,112,971.00	General Fund for Prospects Courtyard
\$ 474,217.00	General Fund for the In-House Wellness Program

C. Contractor agrees that reimbursements of eligible expenses incurred under this Agreement and in compliance with the applicable Budget attached hereto and incorporated herein for all purposes as Attachment III shall be made monthly. Contractor agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Department of Human Services.

D. If specific circumstances require an advance payment on this Agreement, Contractor must submit to the Director of the Department of Human Services a written request for such advance payment, including the specific reason for such request in the form prescribed by the City. Contractor agrees that the City shall not be obligated to pay for any advances requested. In those instances in which advance payments are authorized, the Director of the Department of Human Services may, in her sole discretion, approve an advance payment on this Agreement. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Department of Human Services no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be

considered by the Director of the Department of Human Services on a case-by-case basis, and (c) the decision by the Director of the Department of Human Services whether or not to approve an advance payment is final. For purposes of this Agreement, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:

1. Contractor's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that an advance payment check is available from the City, so long as services have been performed by the subject vendor.
2. The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits with said bank exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor's account balance to exceed FDIC limit shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. Contractor shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made pursuant to this and all other City contracts.
3. The City may deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Agreement term, or from a single subsequent monthly reimbursement the full amount previously advanced to Contractor. The City may consider factors such as projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

E. The Contractor shall submit to City all final requests for payment no later than 45 days from the termination date of this Agreement, unless Contractor receives written authorization from the Director of the Department of Human Services prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.

F. Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor) under this Agreement.

G. Contractor shall maintain a financial management system, and acceptable accounting records that provide for:

1. effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that

they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project; and

2. supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
3. an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to Agreement. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

H. Contractor agrees that Contractor costs or earnings claimed under this Agreement will not be claimed under another contract or grant from another agency.

I. Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project or projects funded by this Agreement. The Cost Allocation Plan and supportive documentation shall be included with Contractor's annual program budget prior to Contract execution by the deadline established by the City. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

J. Upon completion or termination of this Agreement, or at any time during the term of this Agreement, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Agreement, must immediately, upon receipt, be returned by Contractor to the City. Upon completion or termination of this Agreement, all advance payments exceeding allowable costs incurred during the Agreement term shall be immediately returned by Contractor to the City upon demand.

K. Contractor agrees that prior to the payment of any funds under this Agreement, and throughout the term of this Agreement, Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. Contractor agrees that the City may immediately terminate this Agreement if the City finds, as solely determined by the City, that Contractor is in such unsatisfactory financial condition as to endanger performance under this Agreement. The City may consider evidence such as the apparent inability of Contractor to meet its financial obligations and items that reflect detrimentally on the credit worthiness of Contractor. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of Contractor, the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

- L. It is expressly understood and agreed by the City and Contractor that the City's obligations under this Agreement are contingent upon the actual receipt of adequate general fund revenue or grant funds to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Agreement or should grant fund awards be reduced, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option and subject to City Council approval, either terminate this Agreement or reduce the applicable Scope of Work and Payment accordingly.
- M. Contractor shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of the Department of Human Services.
- N. It is expressly understood and agreed that each party shall make payments for the performance of governmental functions or services from current revenues available to the paying party.

Section 4: Program Evaluation, Inspection and Record Keeping Requirements

- A. The Department of Human Services is assigned monitoring, fiscal control, and evaluation of City funded contracts. Therefore, at such times and in such form as may be required by the Department of Human Services, the Contractor shall furnish to the Department of Human Services such statements, records, data, all policies, procedures, and information and permit the City to have interviews with its personnel, board members and service recipients pertaining to the matters covered by this Agreement.
- B. The Contractor shall submit to the Department of Human Services such reports as may be required by the City. At the start of the Agreement term, projected monthly performance measures for the entire Contract term shall be developed and approved by designated Contract monitoring staff. Contractor shall enter data related to services required under this Agreement into the Homeless Information Management System (HMIS) no later than the 5th business day of each month, which shall reflect the actual services delivered and outcomes achieved against the projected performance measures for all months preceding the submission. The services delivered and entered into HMIS shall be in accordance with the Haven for Hope FY 2015 Performance Measures Definitions which is attached hereto and incorporated herein for all purposes as Attachment IV. The Contractor ensures that all information contained in all required reports submitted to City and entered into HMIS is accurate.
- C. Contractor agrees to use records and other information relating to the Prospects Courtyard and the In-House Wellness Program service recipients for the sole purpose of performing its obligations pursuant to this Agreement. Contractor may share information relating to service recipients in furtherance of public purposes such as promoting the health, welfare, and safety of the community to the extent that the information may be disclosed and is not required to be kept confidential under applicable federal and state laws, rules and regulations ("Service Recipient Information"). Additionally, if applicable, Contractor shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in Attachment V, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed to each other pursuant to this Agreement in

compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws. Service Recipient Information is distinguishable from records or information otherwise provided by City to Contractor or exchanged between City and Contractor relating to this Agreement or contract performance (“City Documents”), and as such, Contractor agrees to secure the confidentiality of City Documents. If disclosure of City Documents is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of Department of Human Services prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Section including, but not limited to execution of confidential disclosure agreements, regarding the confidential information with Contractor's employees and subcontractors prior to any disclosure of the confidential information. This Section 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.

- D. 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Agreement, 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, the 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.
- E. 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. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.
- F. Contractor 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. Contractor further agrees to turn over to City all such records upon termination of this Agreement, if requested by the City. Contractor agrees that it shall not, under any circumstances, release any City Documents 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 Section 4.C. of this Agreement.

- G. Within a period not to exceed 90 days from the termination date of the Agreement; Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the City as related to this Agreement.
- H. Contractor agrees to retain all local government records, as defined in Section 201.003(8) of the Texas Local Government Code, created and maintained in the course and scope of the delivery of services under this Agreement for a retention period that shall be no less than the scheduled retention periods set forth in the Local Government Records Act of 1989 and any amendments thereto, found at <http://www.tsl.state.tx.us/slrn/recordspubs/gr.html> and applicable for such records.
- I. The City shall have the authority during normal business hours to make physical inspections of the operating facility occupied by Contractor for the administration of this Agreement and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Agreement.

Section 5: Insurance

The Contractor and the City each maintain insurance or a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

Section 6: Indemnity

City and the Contractor acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

Section 7: Applicable Laws

- A. The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of the Agreement, and debarment and suspension actions.
- B. The Contractor understands that certain funds provided it pursuant to this Agreement are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Consequently, Contractor 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 in the performance of all services under this Agreement. These include the following:

1. Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slrn/recordspubs/gr.html>, but only to the extent that the official records retention schedule shall identify the minimum period of retention of local government records (as defined in Section 201.003(8) of the Texas Local Government Code) created in the performance of this Agreement.
2. Texas Government Code, Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>.
3. Texas Local Government Code, Chapter 252 pertaining to purchasing and contracting authority of municipalities.
4. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services.

C. In addition Contractor shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by Contractor.

D. Contractor 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. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

1. Title VII of the Civil Rights Act of 1964, as amended;
2. Section 504 of the Rehabilitation Act of 1973, as amended;
3. The Age Discrimination Act of 1975, as amended;
4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
5. Fair Labor Standards Act of 1938, as amended;
6. Equal Pay Act of 1963, P.L. 88-38; and
7. All applicable regulations implementing the above laws.

E. The Contractor warrants that any and all taxes that the Contractor 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 Contractor shall comply with all applicable local, state, and federal laws including, but not limited to:

1. worker's compensation;
2. unemployment insurance;
3. timely deposits of payroll deductions;

4. 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;
5. Occupational Safety and Health Act regulations; and
6. Employee Retirement Income Security Act of 1974, P.L. 93-406.

F. Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and all regulations thereunder.

G. Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Agreement as they may be promulgated.

H. All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. If using City of San Antonio General Funds, expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.

Section 8: Conflict of Interest

- A. 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 Agreement. Contractor further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- B. 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.
- C. 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 Agreement shall:
 1. Participate in any decision relating to this Agreement 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
 2. Have any direct or indirect interest in this Agreement or the proceeds thereof.
- D. Contractor acknowledges that it is informed that 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 "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or

employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

E. Contractor 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.

Section 9: Termination

A. Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if the Contractor 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 Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the tenth (10th) day following the day on which such notice is sent).

B. Termination for Convenience - This Agreement may be terminated in whole or in part when the 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 the thirtieth (30th) day following the day on which notice is sent. The Contractor shall also have the right to terminate this Agreement and specify the date thereof, which date shall not be sooner than the end of the thirtieth (30th) day following the day on which notice is sent.

C. The 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 the 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, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.

D. Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Agreement. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Agreement. The Contractor 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, in addition to retaining and utilizing any other remedies available to the City.

Section 10: Personnel Management

- A. The 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.
- B. Contractor is permitted to pay its full time employees funded through this Agreement for the total number of holidays authorized by the City Council for City employees. If the 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 Agreement.
- C. Contractor agrees that the job titles and descriptions set forth in the applicable Budget (Attachment III) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Department of Human Services.
- D. Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization funded by this Agreement.
- E. The Contractor agrees to provide the 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 Agreement.
- F. At the sole discretion of the Director of the Department of Human Services, 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:
 - 1. To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Agreement;
 - 2. To serve as a juror;
 - 3. To attend the funeral of someone in the immediate family. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. 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
 - 4. To attend seminars or workshops;
- G. 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.

Section 11: Adversarial Proceedings

Contractor agrees to comply with the following special provisions:

1. 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; and
2. Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

Section 12: City-Supported Project

Contractor shall publicly acknowledge that the services provided by Contractor under this Agreement are supported by the City as directed by the Department of Human Services. Throughout the term of this Contract, Contractor agrees to include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by Contractor. Contractor shall obtain the City's prior approval of the language and logo, as applicable, to be used.

Section 13: No Use of Funds for Religious Activities

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.

Section 14: Debarment

- A. Contractor 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.
- B. Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Section 17 herein, if, at any time during the term of the Agreement, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

Section 15: Sub-contracting and Assignment

- A. Any other clause of this Agreement to the contrary notwithstanding, none of the work or services covered by this Agreement shall be assigned without the prior written approval of City, and if applicable, the Grantor of the grant. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.
- B. Any other clause of this Agreement to the contrary notwithstanding, none of the work or services covered by this Agreement shall be sub-contracted without the prior written

approval of City, and if applicable, the Grantor of the grant. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written contract or agreement 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 sub-contractors with this Agreement shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.

C. Contractor must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Agreement, and as such, this Agreement will be subject to termination in accordance with the provisions hereof.

Section 16: Relationship of Parties

- A. 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.
- B. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.
- C. Nothing in this Agreement, express or implied, shall be construed to confer rights, remedies or claims on any party other than the parties hereto.

Section 17: Notices

Notices to City required or appropriate under this Agreement shall be deemed sufficient if in writing and delivered in person, or mailed, registered or certified mail, postage prepaid, and addressed to:

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

or to such other address as may have been designated in writing by the Director of the Department of Human Services of the City of San Antonio from time to time. Notices to Contractor shall be deemed sufficient if in writing and delivered in person, or mailed, registered or certified mail, postage prepaid, and addressed to Contractor at:

The Center for Health Care Services
President and CEO
3031 IH 10 West
San Antonio, Texas 78201

or at such other address on file with the City Clerk as Contractor may provide from time to time in writing to City.

Section 18: Approval of the City

Whenever this Agreement calls for approval by City, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of the Department of Human Services of the City, or her designee, unless City Council approval is required.

Section 19: Venue

Contractor and City agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, 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. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar, County, Texas.

Section 20: Gender

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.

Section 21: Licenses And Training

Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Agreement, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

Section 22: Independent Contractor

- A. 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 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.
- B. 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.
- C. Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered

employees of the Contractor 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 Contractor.

Section 23: Severability

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.

Section 24: Entire Agreement; Amendment

This written Agreement, together with the authorizing ordinance or ordinances constitutes the, entire agreement, with respect to the subject matter hereof, with any other written or parol agreement between the City and Contractor being expressly waived by Contractor. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed and agreed to by all the parties hereto. It is understood that the Charter of the City requires that all contracts and agreements with the City be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance; provided, however, the Director of the Department of Human Services shall have the authority to execute an amendment of this Agreement without the necessity of seeking any further approval by the City Council of the City, if permitted by all applicable local, state, and federal laws, and in the following circumstances:

- A. an increase in funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Agreement 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 and increasing Agreement funding during the term of this Agreement shall not exceed the foregoing amount; or
- B. modifications to the scope of services or the SA 2020 Scorecard, as long as the terms of the amendment are reasonably within the parameters set forth in Section 2 of this Agreement; or
- C. budget line item shifts of funds, so long as the total dollar amount of the individual budgets set forth in Section 3 (B) of this Agreement remains unchanged (these modifications may be accomplished through Budget revisions).

Section 25: Authority

Each of the signers of this Agreement hereby represents and warrants that they have authority to execute this Agreement on behalf of each of their governing entities and to bind the respective entities to all of the terms, conditions, provisions and obligations herein contained. This Agreement shall be signed in duplicate originals so that each Party hereto shall have an original.

EXECUTED this _____ day of _____, 2015, the **EFFECTIVE DATE**.

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

**BEXAR COUNTY BOARD OF TRUSTEES
FOR MENTAL HEALTH MENTAL
RETARDATION SERVICES D/B/A THE
CENTER FOR HEALTH CARE SERVICES**

By: _____
Melody Woosley, Director
Department of Human Services

By: _____
Leon Evans, President and CEO

Approved as to Form:

Assistant City Attorney

Attachment I – A –	Scope of Work (Prospects Courtyard, or “PCY”) and
Attachment I – B –	General Procedures for Entry, Intake, and Case Management (PCY)
Attachment I – C –	Scope of Work (In-House Wellness Program)
Attachment II – A –	SA 2020 Scorecard (PCY)
Attachment II – B –	SA 2020 Scorecard (In-House Wellness Program)
Attachment III – A –	Budget (PCY – Main)
Attachment III – B –	Budget (In-House Wellness Program)
Attachment IV –	Haven for Hope FY 2015 Performance Measures Definitions
Attachment V –	HIPAA Business Associate Agreement

WITNESSETH:**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and Bexar County Board of Trustees for Mental Health Mental Retardation Services d/b/a The Center for Health Care Services, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into an interlocal agreement to provide management services of Prospects Courtyard and In-House Wellness operations at the Haven for Hope campus ("Service Contract"), effective October 1, 2015; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

(11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected Individual and the U.S. Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2014, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

- H. **Survival.** The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.
- I. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION.** BA and the Covered Entity acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.
- M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2015.

COVERED ENTITY
City of San Antonio

BUSINESS ASSOCIATE:
The Center for Health Care Services

Melody Woosley, Director
Department of Human Services

Leon Evans, President and CEO

APPROVED AS TO FORM:

Shreya Shah
Assistant City Attorney

Contract #460000

STATE OF TEXAS * COUNTY OF BEXAR * CITY OF SAN ANTONIO *	PROFESSIONAL SERVICES AGREEMENT WITH SAN ANTONIO EDUCATION PARTNERSHIP
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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 designee pursuant to Ordinance No. 2015-09-10-_____, dated September 10, 2015, and the San Antonio Education Partnership.

WITNESSETH:

WHEREAS, the Department of Human Services is designated as the Managing City department, and

WHEREAS, the San Antonio Education Partnership (SAEP) is an independent non-profit corporation incorporated under the laws of the State of Texas with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Executive Director of SAEP is authorized to act on behalf of SAEP and any references to the Executive Director of SAEP are deemed to include references to any of the Executive Director's designee(s); and

WHEREAS, the City has provided certain funds from the City of San Antonio General Fund Operating Budget (hereinafter referred to as "General Fund") to be used in furtherance of the activities and mission of the San Antonio Education Partnership (the "Project"); and

WHEREAS, the City has adopted a budget for the expenditure of funds, and included therein is an additional allocation for SAEP for this contract term in an amount not to exceed \$2,412,814.00 ("Fiscal Year 2016 funding"); and

WHEREAS, of the Total Allocation, \$2,000,000.00 is earmarked to reimburse the San Antonio Education Partnership for scholarships provided for students from City-sponsored high schools (these scholarship reimbursements collectively shall be referred to as "New School Scholarships") and \$412,814.00 is earmarked for outreach (These reimbursement amounts collectively shall be referred to as "Reimbursements," and the amounts for which the City provides Reimbursements collectively shall be referred to as "Reimbursable Expenses"); and

WHEREAS, the Project set out within this agreement does not include operation and administration expenses, including salaries, associated with and allocable to Café College; and

WHEREAS, the City wishes to engage the San Antonio Education Partnership to carry out the Project; NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 The San Antonio Education Partnership will provide, oversee, administer, and carry out all Project activities and services in a manner satisfactory to the City and in compliance with the mutually-agreed to Scope of Work and SA2020 Scorecard attached hereto and incorporated herein for all purposes as Attachments I and II.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2015 and shall terminate on September 30, 2016.

III. CONSIDERATION

3.1 In consideration, the City will fund the Project through Advance Payments and Reimbursements, as applicable, in accordance with the budget approved by City Council of San Antonio in the above referenced Ordinance, and all subsequently authorized amendments to that budget. Said budget ("Reimbursable Expenses") is affixed hereto and incorporated herein for all purposes as Attachment III. It is specifically agreed that the Total Allocation shall not exceed the total amount of \$2,412,814.00, from Fiscal Year 2016 (FY 2016 funding provided under this Agreement.)

3.2 The funding level of this Agreement is based on the following allocations from the following funding sources:

\$2,412,814.00 General Fund

3.3 It is expressly understood and agreed by the City and San Antonio Education Partnership that the City's obligations under this Agreement are contingent upon the actual receipt of adequate general fund revenue to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Agreement, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this Agreement or reduce the Scope of Work and Consideration accordingly. It is further understood and agreed upon by the parties that nothing within this Agreement shall entitle or guarantee San Antonio Education Partnership funding beyond the term of this Agreement.

3.4 As consideration for City's authorization to redirect City scholarship funding in the amount of \$100,000.00 for San Antonio Education Partnership operational costs, San Antonio Education Partnership shall raise from non-City sources and expend funds in the amount of \$150,000.00 to fund scholarships. San Antonio Education Partnership shall provide acceptable evidence, as determined solely by the City, at the end of each quarter throughout the Agreement that San Antonio Education Partnership has expended or is on course to expend non-City funds for the required purpose. If San Antonio Education Partnership does not provide City with acceptable evidence that non-City funds have been expended as required herein, City may reduce or recapture City funding in a proportionate amount up to \$100,000.00 in City funds, without first obtaining City Council approval.

IV. PAYMENT

4.1 The parties agree that funding under this Agreement shall be allocated in accordance with the attached Budget.

4.2 Annual Forecast. Upon commencement of the Agreement, San Antonio Education Partnership shall submit an annual forecast of projected expenditures for each month during the entirety of the Agreement term. The forecast shall break down projected expenditures on a month by month basis. In the event that the required Annual Forecast has not been submitted within the first quarter of this Agreement, San Antonio Education Partnership shall provide an Annual Forecast as well as an Invoice detailing expenditures to date consistent with its submitted forecast for the contract term.

4.3 Requests for Advance Payments. San Antonio Education Partnership must submit to the Director of the Managing City Department a written Request for Advance Payments no later than thirty (30) calendar days prior to the beginning of each new quarter (i.e. due dates: December 1st, March 1st, June 1st, and September 1st). Requests for Advance Payments should be based on an updated and current revised forecast for expenditures for the succeeding remaining quarters. The Director of the Managing City Department may, in his or her sole discretion, approve an advance payment of a Reimbursable Expense. It is understood and

agreed by the parties hereto that (a) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (b) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final.

In those instances in which advance payments are authorized:

- (A) San Antonio Education Partnership's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the San Antonio Education Partnership is notified that an advance payment check is available from the City, so long as services have been performed by the subject vendor.
- (B) The San Antonio Education Partnership must deposit Reimbursements in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where the San Antonio Education Partnership's total deposits in said bank, including all City funds deposited in such account, exceed the FDIC insurance limit, the San Antonio Education Partnership must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by the San Antonio Education Partnership from the San Antonio Education Partnership's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the San Antonio Education Partnership's account balance to exceed the FDIC limit shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. San Antonio Education Partnership shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made pursuant to this and all other City contracts.

4.4 Monthly Invoices. San Antonio Education Partnership shall submit to City by the 15th of the month a monthly invoice in the form prescribed by City, which details the specific costs (by category and by program account number) San Antonio Education Partnership expensed in the previous month to deliver the services described in Article I herein, including supporting documentation of such costs as may be required by the Director of the Managing City Department. The submitted monthly Invoice shall also specify the Program Income (as defined herein) received or projected during the same time period. The Director of the Managing City Department may require the San Antonio Education Partnership's submission of original or certified copies of invoices, cancelled checks, San Antonio Education Partnership's general ledger and/or receipts to verify invoiced expenses.

4.5 Reconciliation of Actual Expenditures in Relation to Quarterly Revised Forecasts. The Request for Advance Payment set out above in Section 4.3 shall take into consideration and account for actual expenditures during that quarter versus those projected expenditures for the quarter. Should requested advanced funds provided for the quarter exceed the amount actually expended, San Antonio Education Partnership agrees that it shall carry forward that surplus amount and credit it against its forecasted expenditures for the succeeding quarter (e.g. first quarter projected expenditures are \$100,00.00; actual expenditures are \$75,000.00; \$25,000.00 will carry forward to the second quarter. Request for Advance Payment for second quarter would show projected expenditures of \$100,000.00, but will show carry-forward credit of \$25,000.00 and therefore only request the balance of \$75,000.00). The City may, in its sole discretion, either deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Agreement term, or from a single subsequent monthly reimbursement the full amount previously advanced to San Antonio Education Partnership. The City may consider factors such as projected allowable costs and other indicators such as San Antonio Education Partnership's financial stability. San Antonio Education Partnership shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements. In no event may any Invoice or Request for Advance Payment or cumulative total thereof, exceed the Total Allocation.

4.6 Reimbursement to City. The San Antonio Education Partnership shall submit to City all final requests for payment no later than forty-five (45) days from the expiration or early termination date of this Agreement,

unless the San Antonio Education Partnership receives written authorization from the Director of the Managing City Department prior to such forty-five (45) day period allowing the San Antonio Education Partnership to submit a request for payment after such forty-five (45) period. San Antonio Education Partnership agrees to reimburse the City for any unused funds received from the City based upon reconciled adjustments resulting from its fourth (4th) quarter balance sheet. Reimbursement shall be made to City within ten (10) calendar days of written notification of the need for reimbursement.

4.7 Forecast and Request for Advance Payment for Succeeding Fiscal Year. San Antonio Education Partnership shall provide a forecast and Request for Advance Payment by August 15th for projected expenditures in the next fiscal year, should funding be available and the parties mutually agree to a new term and agreement. The parties agree and understand that the submission of a forecast and request for advance payment shall not be considered to create any expectation or guarantee of future funding and shall not extend, renew or amend this Agreement unless an extension, amendment or renewal is agreed upon by the parties in writing in accordance with Article XXIV.

4.8 Other Provisions. With respect to Reimbursable Expenses, the parties expressly agree that the City's liability hereunder is limited to making reimbursements for allowable costs incurred. Allowable costs are defined as those costs which are necessary, reasonable and allowable 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 III of this Agreement unless (a) a subsequent budget revision has been approved and signed by the Director of the Managing City Department or designee in cases where the total Agreement Budget remains the same, or (b) a Agreement amendment has been approved and signed by the Director of the Managing City Department pursuant to Section 24.1 of this Agreement in cases where there is an increase or decrease to the total Agreement Budget. Approved budget revisions and Agreement amendments modify the Budget attached hereto, and in such cases San Antonio Education Partnership's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Agreement amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Agreement to the budget shall mean the budget as revised through approved budget revisions or Agreement amendments. In no event shall the City be liable for any cost of the San Antonio Education Partnership not eligible for reimbursement as defined within this Agreement. San Antonio Education Partnership shall remit to City within ten (10) business days after the City makes the request for remittance any funded amounts which were paid pursuant to this Article IV and used to cover disallowed costs. Any such amounts not remitted within ten (10) business days may, at City's option, be subject to offset against future funding obligations by City. For purposes of this Agreement, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees.

4.9 City shall make reimbursement payments of eligible expenses to the San Antonio Education Partnership of any undisputed amounts as determined by the Director of the Managing City Department in accordance with established procedures, so long as City receives a properly completed and documented Invoice and so long as San Antonio Education Partnership satisfactorily completes the work described in this Agreement. The question of satisfactory completion of said work shall be determined by the City alone and its decision shall be final. City shall make payment to San Antonio Education Partnership within 30 calendar days of receiving a valid and approved Invoice or Request for Advance Payment.

4.10 San Antonio Education Partnership agrees that administrative overhead costs may not exceed twenty percent (20%) of the funding provided pursuant to this Contract. San Antonio Education Partnership shall submit detailed administrative costs by line item with its annual program budget prior to Agreement execution by the deadline established by the City.

4.11 The San Antonio Education Partnership shall maintain a financial management system, and acceptable accounting records that provide for:

- (A) accurate, current, and complete disclosure of financial support from each federal, state and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Agreement. If accrual basis reports are required, the San Antonio Education Partnership shall develop accrual data for its reports based on an analysis of the documentation available;
- (B) identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
- (C) effective control over and accountability for all funds, property, and other assets. The San Antonio Education Partnership shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. The San Antonio Education Partnership shall maintain an accounting system that can separate funds by funding source and project;
- (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
- (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the San Antonio Education Partnership;
- (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Article XII hereof, and the terms of the award, grant, or contract, with the City;
- (G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
- (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.12 San Antonio Education Partnership shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Project. The Cost Allocation Plan and supportive documentation shall be included with San Antonio Education Partnership's annual program budget prior to Agreement execution by the deadline established by the City. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

4.13 Upon execution of this Agreement or at any time during the term of this Agreement, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve the San Antonio Education Partnership's systems of internal accounting and administrative controls prior to the release of funds hereunder.

4.14 San Antonio Education Partnership agrees that prior to the payment of any funds under this Agreement, and throughout the term of this Agreement, San Antonio Education Partnership shall maintain financial stability and operate in a fiscally responsible and prudent manner. San Antonio Education Partnership agrees that the City may immediately terminate this Agreement if the City finds, as solely determined by the City, that San Antonio Education Partnership is in such unsatisfactory financial condition as to endanger performance

under this Agreement. The City may consider evidence such as the apparent inability of San Antonio Education Partnership to meet its financial obligations and items that reflect detrimentally on the credit worthiness of San Antonio Education Partnership. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of San Antonio Education Partnership, the appointment of a trustee, receiver or liquidator for all or a substantial part of San Antonio Education Partnership's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against San Antonio Education Partnership. San Antonio Education Partnership shall provide any records requested by City that City deems necessary to make such a determination.

- 4.15 The San Antonio Education Partnership agrees that its costs or earnings claimed under this Agreement will not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
- 4.16 The San Antonio Education Partnership agrees that with respect to Reimbursable Expenses, the City shall not be obligated to any third parties of San Antonio Education Partnership (including any subcontractors or third party beneficiaries of the San Antonio Education Partnership).

V. PROGRAM INCOME

- 5.1 For purposes of this Agreement, "program income" shall mean earnings of the San Antonio Education Partnership realized from activities resulting from this Agreement or from the San Antonio Education Partnership's management of all 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 the San Antonio Education Partnership provided as a result of this Agreement, and payments from clients or third parties for services rendered by the San Antonio Education Partnership pursuant to this Agreement. At the sole option of the Director of the Managing City Department, the San Antonio Education Partnership will be required to return program income funds to City through the Managing City Department, provided, however, that upon prior written approval by the Director of the Managing City Department, the San Antonio Education Partnership may be permitted to retain such funds to be:
 - (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or
 - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.
- 5.2 In any case where the San Antonio Education Partnership is required to return program income to the Managing City Department, the San Antonio Education Partnership must return such program income to City within the timeframe that may be specified by the Director of the Managing City Department. If the Director of the Managing City Department grants the San Antonio Education Partnership authority to retain program income, the San Antonio Education Partnership must submit all reports required by the Managing City Department within the timeframe specified in the Agreement.
- 5.3 The San Antonio Education Partnership shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.
- 5.4 The San Antonio Education Partnership shall fully disclose and be accountable to the City for all program income. The San Antonio Education Partnership must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by the San Antonio Education Partnership to report program income as required is grounds for suspension, cancellation, or termination of this Agreement.

- 5.5 The San Antonio Education Partnership is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department, provided, however, that the City expressly acknowledges that the San Antonio Education Partnership participates in the City Employee Combined Campaign administered by the United Way and that the San Antonio Education Partnership solicits and receives donations from City employees during that Campaign. Nothing in this Section 5.5 shall be construed to restrict the San Antonio Education Partnership's participation in or benefit from the City Employee Combined Campaign.
- 5.6 The San Antonio Education Partnership shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF AGREEMENT

- 6.1 **THIS SECTION INTENTIONALLY LEFT BLANK**
- 6.2 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, the City Manager, as representative of the City, is the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, and shall have the final authority to render or secure an interpretation.
- 6.3 The San Antonio Education Partnership shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of the Managing City Department.
- 6.4 The City shall have the authority during normal business hours to make physical inspections of the operating facility occupied by Contractor for the administration of this Agreement and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Agreement.
- 6.5 The San Antonio Education Partnership's Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal project management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to the San Antonio Education Partnership's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.
- 6.6 The San Antonio Education Partnership agrees to comply with the following check -writing and handling procedures with respect to checks written to pay or reimburse Reimbursable Expenses:
 - (A) No blank checks are to be signed in advance;
 - (B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check; San Antonio Education Partnership agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 per location for any given calendar month during the term of this Agreement unless San Antonio Education Partnership receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt; and
 - (C) Checks issued by City to the San Antonio Education Partnership for all Reimbursable Expenses shall be deposited into the appropriate bank account immediately or by the next business day after the San Antonio Education Partnership's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.

- 6.7 City reserves the right to request the San Antonio Education Partnership to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.
- 6.8 The use or purchase of gift cards is not allowable and reimbursable under this Contract.

VII. AUDIT

- 7.1 If the San Antonio Education Partnership expends \$750,000.00 or more of City dollars, provided pursuant to this Agreement or any other City contract, then during the term of this Agreement, the San Antonio Education Partnership shall have completed an independent audit and shall submit the required report within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the San Antonio Education Partnership's fiscal year, expiration or early termination of this Agreement, whichever is earlier. The San Antonio Education Partnership understands and agrees to furnish the Managing City Department a copy of the audit report, including a corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within thirty (30) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

The San Antonio Education Partnership agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the San Antonio Education Partnership or its programs of any findings about accounting deficiencies, or violations of the San Antonio Education Partnership's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within a period of ten (10) calendar days upon the San Antonio Education Partnership's receipt of the report.

- 7.2 The San Antonio Education Partnership agrees that if the San Antonio Education Partnership receives or expends more than \$750,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (Uniform Guidance) and the San Antonio Education Partnership shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana. The San Antonio Education Partnership may submit reports through the following website: <http://harvester.census.gov/sac/> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

Upon completion of Form SF-SAC, the San Antonio Education Partnership may submit the completed report by mail to:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

San Antonio Education Partnership agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from San Antonio Education Partnership's Single Audit. Reimbursement shall be made within thirty (30) calendar days of written notification regarding the need for reimbursement.

- 7.3 If the San Antonio Education Partnership expends less than \$750,000.00 of City dollars, then during the term of this Agreement, the San Antonio Education Partnership shall complete and submit an unaudited financial statement(s) within a period not to exceed nine (9) months immediately succeeding the end of the San Antonio Education Partnership's fiscal year, expiration or early termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared

by a bookkeeper and a cover letter signed by the San Antonio Education Partnership attesting to the correctness of said financial statement.

- 7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each project funded by or through the City.
- 7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, the San Antonio Education Partnership agrees to make available to City all accounting and Project records.

The San Antonio Education Partnership 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 the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after the expiration of this Agreement, save and except when there is litigation or if the audit report covering such agreement has not been accepted, the San Antonio Education Partnership 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 the San Antonio Education Partnership in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

The City may, in its sole and absolute discretion, require the San Antonio Education Partnership to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the San Antonio Education Partnership shall abide by such requirements.

- 7.6 When an audit or examination determines that the San Antonio Education Partnership has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the San Antonio Education Partnership 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, the San Antonio Education Partnership will promptly refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, the San Antonio Education Partnership 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 the City. If the San Antonio Education Partnership 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 cashier's check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the San Antonio Education Partnership is forbidden from reducing Project expenditures and the San Antonio Education Partnership must use its own funds to maintain the Project.

The San Antonio Education Partnership agrees and understands that all expenses associated with the collection of delinquent debts owed by the San Antonio Education Partnership shall be the sole responsibility of the San Antonio Education Partnership and shall not be paid from any Project funds received by the San Antonio Education Partnership under this Agreement.

7.7 If the City determines, in its sole discretion, that the San Antonio Education Partnership 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 the San Antonio Education Partnership pay for such audit from non-City resources.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the San Antonio Education Partnership shall furnish to the Managing City Department such statements, records, data, all policies and procedures, and information and permit the City to have interviews with its personnel, board members and project participants pertaining to the matters covered by this Agreement.

8.2 The San Antonio Education Partnership shall submit to the Managing City Department such reports as may be required by the City, including the Contract Monitoring Report (CMR) which template is attached hereto and incorporated herein as Attachment V. At the start of the Agreement term, a Contract Monitoring Report containing projected monthly performance measures for the entire Agreement term shall be developed and approved by designated Agreement monitoring staff. San Antonio Education Partnership shall submit a completed Contract Monitoring Report no later than the 15th business day of every month, which shall reflect the actual services delivered and outcomes achieved against the projected performance measures for all months preceding the submission. The San Antonio Education Partnership ensures that all information contained in all required reports submitted to City is accurate and support documentation shall be maintained.

8.3 The San Antonio Education Partnership 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, and 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. Additionally, San Antonio Education Partnership shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in Attachment VI, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed to each other pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws. The San Antonio Education Partnership 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, the San Antonio Education Partnership shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. The San Antonio Education Partnership shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with the San Antonio Education Partnership's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 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 expiration or early termination of this Agreement, the San Antonio Education Partnership shall return to City all copies of materials related to the Project including the Confidential Information.

8.4 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance.

Therefore, if the San Antonio Education Partnership receives inquiries regarding documents within its possession pursuant to this Agreement, the San Antonio Education Partnership 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 San Antonio Education Partnership shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of the San Antonio Education Partnership's receipt of such request.

8.5 In accordance with Texas law, the San Antonio Education Partnership acknowledges and agrees that all City 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, the San Antonio Education Partnership agrees that no such City government records produced by or on the behalf of the San Antonio Education Partnership pursuant to this Agreement shall be the subject of any copyright or proprietary claim by the San Antonio Education Partnership.

The San Antonio Education Partnership acknowledges and agrees that all City 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 during normal business hours. The San Antonio Education Partnership further agrees to turn over to City all such City records upon expiration or early termination of this Agreement, if requested by the City. The San Antonio Education Partnership agrees that it shall not, under any circumstances, release any records created solely for the City during the course of performance of the Agreement to any entity without the written permission of the Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Agreement.

8.6 Ownership of Intellectual Property. San Antonio Education Partnership and City agree that the Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. San Antonio Education Partnership hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. San Antonio Education Partnership agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure San Antonio Education Partnership's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, San Antonio Education Partnership hereby irrevocably designates and appoints City and its duly authorized officers and agents as San Antonio Education Partnership's agent and attorney-in-fact, to act for and in San Antonio Education Partnership's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by San Antonio Education Partnership. Provided, however, nothing herein contained is intended nor shall it be construed to require San Antonio Education Partnership to transfer any ownership interest in San Antonio Education Partnership's best practice and benchmarking information to the City.

8.7 Within a period not to exceed 90 days from the expiration or early termination date of the Agreement, the San Antonio Education Partnership shall submit all final client and/or fiscal reports and all required deliverables to the City Managing Department. The San Antonio Education Partnership understands and agrees that in conjunction with the submission of the final report, the San Antonio Education Partnership shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

8.8 San Antonio Education Partnership shall provide to the Managing City Department all information requested by the Managing City Department relating to the San Antonio Education Partnership's Board functions. Information required for submission shall include but may not be limited to:

- (A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
- (B) Current Bylaws and Charter;
- (C) Terms of Officers;
- (D) Amendments to Bylaws;
- (E) Schedule of anticipated board meetings for current Fiscal Year;
- (F) Minutes of board meetings that are approved by the San Antonio Education Partnership's board; and
- (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

8.9 The San Antonio Education Partnership 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 12.3 of this Agreement.

IX. INSURANCE

9.1 The San Antonio Education Partnership agrees to comply with the following insurance provisions:

(A) Prior to the commencement of any work under this Agreement, San Antonio Education Partnership shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the Managing City Department, which shall be clearly labeled **San Antonio Education Partnership – Scholarships** 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 be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Managing City Department. 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 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.

(C) The San Antonio Education Partnership's financial integrity is of interest to the City; therefore, subject to San Antonio Education Partnership's right to maintain reasonable deductibles in such amounts as are approved by the City, San Antonio Education Partnership shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at San Antonio Education Partnership'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. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury d. Sexual Abuse / Molestation**	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
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
** Required for projects involving services to children	

(D) San Antonio Education Partnership agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of San Antonio Education Partnership herein, and provide a certificate of insurance and endorsement that names the San Antonio Education Partnership and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of San Antonio Education Partnership. San Antonio Education Partnership 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.

(E) 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 required endorsements. San Antonio Education Partnership shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. San Antonio Education Partnership shall pay any costs incurred resulting from provision of said documents.

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

(F) San Antonio Education Partnership 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, or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

(G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, San Antonio Education Partnership shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend San Antonio Education Partnership'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.

H) In addition to any other remedies the City may have upon San Antonio Education Partnership'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 San Antonio Education Partnership to stop work hereunder, and/or withhold any payment(s) which become due to San Antonio Education Partnership hereunder until San Antonio Education Partnership demonstrates compliance with the requirements hereof.

(I) Nothing herein contained shall be construed as limiting in any way the extent to which San Antonio Education Partnership may be held responsible for payments of damages to persons or property resulting from San Antonio Education Partnership's or its subcontractors' performance of the work covered under this Agreement.

(J) It is agreed that San Antonio Education Partnership'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 Agreement.

(K) 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.

(L) San Antonio Education Partnership and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 THE SAN ANTONIO EDUCATION PARTNERSHIP AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

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

(B) 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.

(C) The San Antonio Education Partnership shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the San Antonio Education Partnership known to the San Antonio Education Partnership related to or arising out of the San Antonio Education Partnership's activities under this Agreement.

XI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) AND RELATED POLICIES

11.1 THIS POLICY IS NOT APPLICABLE TO THIS AGREEMENT.

XII. APPLICABLE LAWS

12.1 The San Antonio Education Partnership certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. Failure to comply with the above-referenced law and regulations could subject the San Antonio Education Partnership to suspension of payments, termination of Agreement, and debarment and suspension actions.

12.2 The San Antonio Education Partnership understands that certain funds provided it pursuant to this Agreement are funds that have been made available by the City's General Operating Budget. Consequently, the San Antonio Education Partnership agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by the San Antonio Education Partnership hereunder as directed by the City or as required in this Agreement. In addition the San Antonio Education Partnership shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

12.3 All of the work performed under this Agreement by the San Antonio Education Partnership 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. Additionally, the San Antonio Education Partnership shall comply with the following:

- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slrn/recordspubs/gr.html>
- Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>
- Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
- Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services

Texas Local Government Code can be found at <http://www.statutes.legis.state.tx.us/>

In addition to the applicable laws referenced above, the San Antonio Education Partnership must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to the San Antonio Education Partnership hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

12.4 As a party to this Agreement, San Antonio Education Partnership 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, the San Antonio Education Partnership 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.

12.5 The San Antonio Education Partnership warrants that any and all taxes that the San Antonio Education Partnership 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 San Antonio Education Partnership 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.

12.6 The San Antonio Education Partnership agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and all regulations thereunder.

12.7 The San Antonio Education Partnership agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Project as they may be promulgated.

12.8 All expenditures by the San Antonio Education Partnership or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. Expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.

12.9 The San Antonio Education Partnership shall submit to the Managing City Department on an annual basis its Form 990 or 990T thirty (30) days after Internal Revenue Service (IRS) deadlines for completion. If filing an extension, San Antonio Education Partnership shall notify the City in writing of the extension and the anticipated date of filing with the IRS. San Antonio Education Partnership shall submit the 990 or 990T to the Managing City Department no later than 30 days after the date of filing the form for which San Antonio Education Partnership received an extension.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

13.1 The San Antonio Education Partnership warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement 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 the San Antonio Education Partnership or the City. 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.

13.2 The San Antonio Education Partnership covenants that neither it nor any member of its governing body or of its staff presently has any interest, whether direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The San Antonio Education Partnership further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

13.3 The San Antonio Education Partnership 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.

13.4 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 Agreement shall:

- (A) Participate in any decision relating to this Agreement 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 Agreement or the proceeds thereof.

13.5 The San Antonio Education Partnership acknowledges that it is informed that 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 "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.6 The San Antonio Education Partnership 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). The San Antonio Education Partnership further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. TERMINATION

14.1 Termination for Cause - Should the San Antonio Education Partnership fail to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if the San Antonio Education Partnership should violate any of the covenants, conditions, or stipulations of the Agreement, the City shall thereupon have the right to terminate this Agreement in whole or in part by sending written notice to the San Antonio Education Partnership of such termination and specify the effective date thereof (which date shall not be sooner than the tenth (10th) day following the day on which such notice is sent). The San Antonio Education Partnership 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 the San Antonio Education Partnership's performance upon which final payment is conditioned shall include, but not be limited to, the San Antonio

Education Partnership's complete and satisfactory performance, of its obligations for which final payment is sought.

14.2 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 desired results commensurate with the further expenditure of funds or if the City has insufficient revenue to satisfy the City's liabilities hereunder. Such termination by City shall specify the date thereof, which date shall not be sooner than the thirtieth (30th) day following the day on which notice is sent. The San Antonio Education Partnership shall also have the right to terminate this Agreement and specify the date thereof, which date shall not be sooner than the end of the thirtieth (30th) day following the day on which notice is sent. The San Antonio Education Partnership 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 the San Antonio Education Partnership's performance upon which final payment is conditioned shall include, but not be limited to, the San Antonio Education Partnership's complete and satisfactory performance of its obligations for which final payment is sought.

14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the San Antonio Education Partnership for failure to comply with the terms and provisions of this Agreement. Specifically, at the sole option of the City, the San Antonio Education Partnership may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the San Antonio Education Partnership is not in compliance with this Agreement. The San Antonio Education Partnership 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, in addition to retaining and utilizing any other remedies available to the City.

14.4 Should the San Antonio Education Partnership be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be within the City's sole and absolute discretion and shall be grounds for termination for cause.

XV. PROHIBITION OF POLITICAL ACTIVITIES

15.1 The San Antonio Education Partnership agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

15.2 The San Antonio Education Partnership agrees that no funds provided under this Agreement 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.

15.3 The prohibitions set forth in sections 15.1 and 15.2 of Article XV of this Agreement 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.

15.4 To ensure that the above policies are complied with, the San Antonio Education Partnership 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 the Managing City Department. The San Antonio Education Partnership shall list the name and number of a contact person from the Managing City Department on the statement that the San Antonio Education Partnership's personnel can call to report said violations.

15.5 The San Antonio Education Partnership agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the San Antonio Education Partnership under this Agreement may, at the City's discretion, be withheld until the situation is resolved.

15.6 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, the San Antonio Education Partnership 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.

XVI. PERSONNEL MANAGEMENT

16.1 The San Antonio Education Partnership establishes personnel management policies and procedures for employee positions paid by the San Antonio Education Partnership. The San Antonio Education Partnership will comply with all state and federal laws prohibiting discrimination and a hostile work environment and agrees to provide a workplace free of harassment.

16.2 The San Antonio Education Partnership 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.

16.3 San Antonio Education Partnership is permitted to pay its full time employees for the total number of holidays authorized by the City Council for City employees. If the San Antonio Education Partnership 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 Agreement.

16.4 San Antonio Education Partnership agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department.

16.5 San Antonio Education Partnership agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.

16.6 The San Antonio Education Partnership agrees to provide the City with the names and license registration of any employees of the San Antonio Education Partnership regulated by state law whose activities contribute toward, facilitate, or coordinate the performance of this Agreement.

16.7 At the sole discretion of the Director of the Managing City Department, San Antonio Education Partnership 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 Agreement;
- (B) To serve as a juror;
- (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. In such event, the San Antonio Education Partnership 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.

16.8 Chief Executive Officers (CEOs), directors and other supervisory personnel of the San Antonio Education Partnership 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.

XVII. ADVERSARIAL PROCEEDINGS

17.1 The San Antonio Education Partnership agrees to comply with the following special provisions:

- (A) 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; and
- (B) The San Antonio Education Partnership, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

18.1 The San Antonio Education Partnership shall publicly acknowledge that this Project is supported by the City of San Antonio, Department of Human Services. Throughout the term of this Agreement, San Antonio Education Partnership agrees to include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by San Antonio Education Partnership. San Antonio Education Partnership shall obtain the City's prior approval of the language and logo, as applicable, to be used.

XIX. EQUIPMENT

19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at the Agreement's expiration or early termination, for whatever reason. The San Antonio Education Partnership agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon expiration or early termination of this Agreement. Equipment that has reverted to the San Antonio Education Partnership through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.

19.2 The San Antonio Education Partnership agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the San Antonio Education Partnership to replace it with

like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.

19.3 The San Antonio Education Partnership shall maintain records on all items obtained with City funds to include:

- (A) A description of the equipment, including the model and serial number, if applicable;
- (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
- (C) An indication of whether the equipment is new or used;
- (D) The vendor's name (or transferred from);
- (E) The location of the property;
- (F) The property number shown on the property tag; and,
- (G) A list of disposed items and disposition

19.4 The San Antonio Education Partnership is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The San Antonio Education Partnership shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that the San Antonio Education Partnership discovers the equipment / property having been lost, stolen, missing, damaged and/or destroyed. The report submitted by the San Antonio Education Partnership to the Managing City Department shall minimally include:

- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.5 All equipment purchased under this Agreement shall be fully insured against fire, loss and theft.

19.6 The San Antonio Education Partnership shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

XX. TRAVEL

20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present and approved in the Budget.

20.2 The San Antonio Education Partnership agrees that mileage reimbursement paid to the San Antonio Education Partnership's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with IRS rules. The San Antonio Education Partnership further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City. The San Antonio Education Partnership shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the San Antonio Education Partnership.

20.3 The San Antonio Education Partnership agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Agreement, the San Antonio Education Partnership shall 1) provide City with detailed documentation of such business travel expense(s),

2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

21.1 The San Antonio Education Partnership 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.

XXII. DEBARMENT

22.1 The San Antonio Education Partnership 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.

22.2 The San Antonio Education Partnership shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the contract, including any renewals hereof, the San Antonio Education Partnership learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXIII. ASSIGNMENT

23.1 The San Antonio Education Partnership shall not assign nor transfer the San Antonio Education Partnership's interest in this Agreement or any portion thereof without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXIV. AMENDMENT

24.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and the San Antonio Education Partnership and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing City Department shall have the authority to execute an amendment of this Agreement 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, and in the following circumstances:

A. an increase in funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Agreement or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing Agreement funding and executed without City Council approval pursuant to this subsection during the term of this Agreement shall not exceed the foregoing amount;

B. modifications to the Scope of Work and SA2020 Scorecard set forth in Attachments I and II hereto due to the adjustment described in subsection (A) of this Section or for any other reason, so long as the terms of the amendment are reasonably within the parameters set forth in the original Scope of Work and SA2020 Scorecard, as set forth in Attachments I and II hereto;

C. budget shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Agreement remains unchanged (these modifications may be accomplished through Budget revisions);

D. modifications to the insurance provisions described in Article IX of this Agreement that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department; or

E. reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.3.

XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City.
- 25.2 The San Antonio Education Partnership must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, state and federal procurement standards, rules, regulations and laws have not been met by the San Antonio Education Partnership with respect to any of its sub-contracts supported by any part of the Total Allocation, then the San Antonio Education Partnership will be deemed to be in default of this Agreement, and as such, this Agreement will be subject to termination in accordance with the provisions hereof.
- 25.3 Any work or services for sub-contracting hereunder shall be sub-contracted only by written Agreement, 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 sub-contractors with this Agreement shall be the responsibility of the San Antonio Education Partnership. The San Antonio Education Partnership agrees that payment for services of any sub-contractor shall be submitted through the San Antonio Education Partnership, and the San Antonio Education Partnership shall be responsible for all payments to sub-contractors.
- 25.4 The San Antonio Education Partnership certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program.

XXVI. OFFICIAL COMMUNICATIONS

- 26.1 For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and delivered in person, mailed by overnight or express service or 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, TX 78205

The San Antonio Education Partnership:
 Executive Director
 San Antonio Education Partnership
 131 El Paso St.
 San Antonio, TX 78204

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.

XXVII. VENUE

27.1 The San Antonio Education Partnership and City agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, 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. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

XXVIII. GENDER

28.1 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.

XXIX. AUTHORITY

29.1 The signer of this Agreement for the San Antonio Education Partnership represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the San Antonio Education Partnership and to bind the San Antonio Education Partnership to all of the terms, conditions, provisions and obligations herein contained. The San Antonio Education Partnership shall provide evidence to City upon execution of this Agreement that it is currently operating as a Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code. The San Antonio Education Partnership 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. The San Antonio Education Partnership shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Agreement.

XXX. LICENSES AND TRAINING

30.1 The San Antonio Education Partnership warrants and certifies that the San Antonio Education Partnership's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Agreement, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided hereunder.

XXXI. INDEPENDENT ORGANIZATION

31.1 It is expressly understood and agreed that the San Antonio Education Partnership is an independent organization that provides professional services for the City. As such, the San Antonio Education Partnership shall be responsible for its respective acts or omissions and that the City shall in no way be responsible therefor, 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.

31.2 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.

31.3 Any and all of the employees of the San Antonio Education Partnership, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of the San Antonio Education Partnership 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 San Antonio Education Partnership.

XXXII. SEVERABILITY

32.1 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 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.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered “high profile” as that term is defined in the City of San Antonio Procurement Policy and Procedures Manual.

33.1 San Antonio Education Partnership acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the City from the time the City begins discussions or negotiations, and ending on the 30th calendar day following the contract award. San Antonio Education Partnership understands that if the legal signatory entering the Agreement has made such a contribution, the City may not award the Agreement to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

33.2 The San Antonio Education Partnership acknowledges that the City has identified this Agreement as high profile.

33.3 The San Antonio Education Partnership warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement 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 Agreement. Should the signer of this Agreement violate this provision, the City Council may, in its discretion, declare the Agreement void.

XXXIV UNLAWFUL EMPLOYMENT OF ALIENS

34.1 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if San Antonio Education Partnership receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), San Antonio Education Partnership shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of San Antonio Education Partnership receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state’s economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.

XXXV. ENTIRE CONTRACT

35.1 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 supersede all prior negotiations, representations, or contracts, either oral or written.

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

CITY OF SAN ANTONIO:

SAN ANTONIO EDUCATION PARTNERSHIP:

Melody Woosley, Director
Department of Human Services

Adriana Contreras, Executive Director

APPROVED AS TO FORM:

City Attorney

Board President (if required by agency)

ATTACHMENTS:

- Attachment I – Scope of Work
- Attachment II – SA2020 Scorecard
- Attachment III- Reimbursable Expenses
- Attachment IV- Intentionally omitted
- Attachment V – Contract Monitoring Report Form
- Attachment VI - HIPAA Business Associate Agreement

Attachment I

SCOPE OF WORK

San Antonio Education Partnership

In Fiscal Year 2016, the San Antonio Education Partnership will provide scholarship opportunities to students at high schools sponsored by the City. This work includes, but is not limited, to the following:

- Providing specific information materials to communicate scholarship opportunity to students in sponsored schools;
- Undertaking outreach (class presentations, student assemblies, parent forums, faculty meetings, etc.) to students, parents and school faculty/staff at schools to create awareness of college access, the Education Partnership and the scholarship opportunity;
- Meeting with students to explain scholarship eligibility requirements and provide college and career guidance services;
- Working with schools to obtain grade and attendance information to develop preliminary and final eligibility lists of Partnership-eligible scholarship students;
- Creating database to maintain information for new students for reporting, eligibility, and verification purposes, including modification of existing Client Services Information System (CSIS) database;
- Submit funds to the participating colleges and universities on behalf of students that have received the cafécollege Award up to the maximum amounts established by the San Antonio Education Partnership board. The amounts set by the San Antonio Education Partnership board shall not exceed the following limits set by the City per student, per semester:

\$300 for a student attending community college;

\$425 for a student attending public university; and

\$750 for a student attending private university.

- Work with school staff and students of the San Antonio Education Partnership participating high schools to determine eligibility, assess scholarship award and administer scholarship program for eligible students attending Robert E. Lee, Thomas Edison, Louis Fox Tech, Sam Houston, Theodore Roosevelt, Highlands, Harlandale, McCollum, South San, Southside, G.W. Brackenridge, Sidney Lanier, Luther Burbank, John F. Kennedy, Memorial, John Jay, O.W. Holmes, Taft, Thomas Jefferson, Tom Clark, Winston Churchill, James Madison, MacArthur, Marshall, and/or Southwest High School.

Attachment III**BUDGET**
Reimbursable Expenses

San Antonio Education Partnership FY 2016 Budget	
Outreach	\$412,814
Scholarships	\$2,000,000
2016 SAEP Allocation	\$2,412,814
2016 SAEP Invoicing	\$2,412,814
Total SAEP COSA Funding	\$2,412,814

WITNESSETH:**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio (“Covered Entity”), and San Antonio Education Partnership, a Business Associate (“BA”).

WHEREAS, the City of San Antonio and BA have entered into a professional services agreement to provide scholarship and outreach services (“Service Contract”), effective October 1, 2015; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) “Individual” shall have the same meaning as the term “Individual” in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) “Parties” shall mean Covered Entity and BA.

(4) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

- (9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
- (11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2013, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*

M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the

Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2015, by the **City of San Antonio**, signing by and through its Director of the Department of Human Services.

COVERED ENTITY
By City of San Antonio

BUSINESS ASSOCIATE:
San Antonio Education Partnership

By: _____

By: _____

Print Name: Melody Woosley

Print Name: Adriana Contreras

Print Title: Director, Department of Human Services Print Title: Executive Director

APPROVED AS TO FORM:

Shreya Shah
Assistant City Attorney

Contract #

STATE OF TEXAS * **DELEGATE AGENCY CONTRACT**
COUNTY OF BEXAR * **WITH**
CITY OF SAN ANTONIO * **SAN ANTONIO EDUCATION PARTNERSHIP**

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 Director of the Department of Human Services pursuant to Ordinance No. 2015-09-10_____, dated September 10, 2015, and the San Antonio Education Partnership, (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department of Human Services is designated as the managing City department (hereinafter referred to as "Managing City Department") for the City; and

WHEREAS, the City has provided certain funds from the City of San Antonio General Fund Operating Budget (hereinafter referred to as "General Fund") for Youth Development services; and

WHEREAS, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of \$685,000.00 for a project entitled "Dr. Manuel P. Berriozábal cafécollege Operations" (hereinafter referred to as the "Project" or "Program"); and

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

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 The Contractor 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** and **SA2020 Scorecard** attached hereto and incorporated herein for all purposes as Attachment I.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on **October 1, 2015** and shall terminate on **September 30, 2016**.

2.1 The City shall have the option to renew this Contract for three periods, with each period being one year in length, each period subject to (a) the City's receipt of additional monies sufficient to fund the renewal term; (b) the Contractor satisfactorily meeting the performance requirements of this Contract, as solely determined by the City and (c) the prior approval by the City Council of San Antonio of such Contract renewal, as evidenced by an ordinance duly passed and approved.

III. CONSIDERATION

3.1 In consideration, the City will reimburse Contractor for costs incurred in accordance with the budget approved by City Council of San Antonio in the above referenced Ordinance, and all subsequently authorized amendments to that budget. Said budget is attached hereto and incorporated herein for all purposes as Attachment II. It is specifically agreed that reimbursement hereunder shall not exceed the total amount of \$685,000.00.

3.2 The funding level of this Contract is based on an allocation from the following funding sources:

\$685,000.00 General Fund

Consequently, Contractor agrees to comply with Sections I, II (B) of the **Funding Guide**, attached hereto and incorporated herein for all purposes as Attachment III.

3.3 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Contract are contingent upon the actual receipt of adequate general fund revenue to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Contract, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this Contract or reduce the Scope of Work and Consideration accordingly.

IV. PAYMENT

4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the 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, including but not limited to those laws referenced in Section XII hereof, 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 II of this Contract, unless (a) a subsequent budget revision has been approved and signed by the Director of the Managing City Department or designee in cases where the total Contract Budget remains the same, or (b) a Contract amendment has been approved and signed by the Director of the Managing City Department pursuant to Section 24.1 of this Contract in cases where there is an increase or decrease to the total Contract Budget. Approved budget revisions and Contract amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Contract amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Contract to the budget shall mean the budget as revised through approved budget revisions or Contract amendments. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. Contractor shall remit to City within ten (10) business days after the City makes the request for remittance any funded amounts which were paid pursuant to this Article IV and used to cover disallowed costs. Any such amounts not remitted within ten (10) business days may, at City's option, be subject to offset against future funding obligations by City. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees.

4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request in the form prescribed by the City. Contractor agrees that the City shall not be obligated to pay for any advances requested. In those instances in which advance payments are authorized, the Director of the Managing City Department may, in the Director's sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City

Department whether or not to approve an advance payment is final. In those instances in which advance payments are authorized:

- (A) Contractor's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that an advance payment check is available from the City, so long as services have been performed by the subject vendor.
- (B) The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited with said bank, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor's account balance to exceed the FDIC limit shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. Contractor shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made pursuant to this and all other City contracts.
- (C) The City may, in its sole discretion, either deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Contract term, or from a single subsequent monthly reimbursement the full amount previously advanced to Contractor. The City may consider factors such as projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

4.3 Contractor shall submit to City no later than the fifteenth (15th) of every month a monthly Request for Payment in the form prescribed by City, which details the specific costs (by category and by program account number) Contractor expensed in the previous month for the services delivered as described in Article I herein, including supporting documentation of such costs as may be required by the Director of the Managing City Department. The Request for Payment shall also specify the Program Income (as defined herein) received or projected during the same time period. The Director of the Managing City Department may require the Contractor's submission of original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses.

4.4 City shall make reimbursement payments of eligible expenses to the Contractor of any undisputed amounts as determined by the Director of the Managing City Department in accordance with established procedures, so long as City receives a properly completed and documented Request for Payment. City shall make payment to Contractor within 30 calendar days of receiving a valid and approved Request for Payment.

4.5 The Contractor shall submit to City all final requests for payment no later than 45 days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.

4.6 Contractor agrees that the City shall not be obligated to any third parties of Contractor (including any subcontractors or third party beneficiaries of Contractor) under this Contract.

4.7 Contractor agrees that administrative overhead costs may not exceed twenty percent (20%) of the funding provided pursuant to this Contract. Contractor shall submit detailed administrative costs by line item with its annual program budget prior to Contract execution by the deadline established by the City.

4.8 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:

- (A) accurate, current, and complete disclosure of financial support from each federal, state and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
- (B) identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
- (C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project;
- (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
- (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
- (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;
- (G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
- (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.9 Contractor agrees that Contractor costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.

4.10 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Project funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included with Contractor's annual program budget prior to Contract execution by the deadline established by the City. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

4.11 Upon expiration or early 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, must immediately, upon receipt, be returned by Contractor to the City. Upon expiration or early termination of this Contract, all advance payments exceeding allowable costs incurred during the Contract term or for which Contractor fails to deliver services as consideration and as specified under the Contract shall be returned within twenty (20) calendar days of written notification to Contractor of the need for reimbursement.

4.12 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

4.13 Contractor agrees that prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. Contractor agrees that the City may immediately terminate this Contract if the City finds, as solely determined by the City, that Contractor is in such unsatisfactory financial condition as to endanger performance under this Contract. The City may consider evidence such as the apparent inability of Contractor to meet its financial obligations and items that reflect detrimentally on the credit worthiness of Contractor. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of Contractor, the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

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. At the sole option of the Director of the Managing City Department, Contractor will either (a) be required to return program income funds to City through the Managing City Department, or (b) upon prior written approval by the Director of the Managing City Department, Contractor may be permitted to retain such funds to be:

- (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or
- (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.

5.2 In any case where Contractor is required to return program income to the Managing City Department, Contractor must return such program income to City within the timeframe that may be specified by the Director of the Managing City Department. If the Director of the Managing City Department grants Contractor authority to retain program income, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.

5.3 Contractor shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.

5.4 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.

5.5 Contractor is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.

5.6 Contractor shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 The Contractor agrees to comply with all the terms and conditions that the City must comply with within its contract with the Grantor, if this Contract is Grant funded. If applicable, a copy of said Grant contract is attached hereto and incorporated herein for all purposes as Attachment V.
- 6.2 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 the City, is the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the Grantor's rules or regulations, if Grant funded, and shall have the final authority to render or secure an interpretation.
- 6.3 Contractor shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director of the Managing City Department.
- 6.4 The City shall have the authority during normal business hours to make physical inspections of the operating facility occupied by Contractor for the administration of this Contract and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.
- 6.5 The Contractor Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal project management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.
- 6.6 Contractor agrees to comply with the following check writing and handling procedures:
 - (A) No blank checks are to be signed in advance.
 - (B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.
 - (C) Checks issued by City to Contractor shall be deposited into the appropriate bank account immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 6.7 City reserves the right to request Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.
- 6.8 The use or purchase of gift cards is not allowable and reimbursable under this Contract.

VII. AUDIT

- 7.1 If Contractor expends \$750,000.00 or more of City dollars, provided pursuant to this Contract or any other City contract, then during the term of this Contract, the Contractor shall have completed an independent audit and shall submit the required report within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish the Managing City Department a copy of the audit report, including a corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter

within thirty (30) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the 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 the Managing City Department within a period of ten (10) calendar days upon the Contractor's receipt of the report.

7.2 Contractor agrees that if Contractor receives or expends more than \$750,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (Uniform Guidance) and Contractor shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana. Contractor may submit reports through the following website: <http://harvester.census.gov/sac/> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

Upon completion of Form SF-SAC, Contractor may submit the completed report by mail to:

Federal Audit Clearinghouse
 Bureau of the Census
 1201 E. 10th Street
 Jeffersonville, Indiana 47132

Contractor agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement shall be made within thirty (30) calendar days of written notification regarding the need for reimbursement.

7.3 If Contractor expends less than \$750,000.00 of City dollars during the term of this Contract, then the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed nine (9) months immediately succeeding the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.

7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each project funded by or through the City.

7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Contract at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The 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 and shall continue to make available the 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 three (3) 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 expiration, save and except when there is litigation or if the audit report covering such Contract has not been accepted, then the 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, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

The City may, in its sole and absolute discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and the Contractor shall abide by such requirements.

7.6 When an audit or examination determines that the Contractor has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the 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, the Contractor will promptly refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department 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 the City. If 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 cashier's check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the Contractor is forbidden from reducing 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 the Contractor and shall not be paid from any Project funds received by the Contractor under this Contract.

7.7 If the City determines, in its sole discretion, that Contractor 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 the Contractor pay for such audit from non-City resources.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, all policies, procedures, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and Project participants pertaining to the matters covered by this Contract.

8.2 The Contractor shall submit to the Managing City Department such reports as may be required by the City, or as may be required by the Grantor, if Grant funded, including the Contract Monitoring Report, which template is attached hereto and incorporated herein as Attachment IV. At the start of the Contract term, a Contract Monitoring Report containing projected monthly performance measures for the entire Contract term shall be developed and approved by designated Contract monitoring staff. Contractor shall submit a completed Contract Monitoring Report no later than the 15th calendar day of every month which shall reflect the actual services delivered and outcomes achieved against the projected performance measures for all months preceding the submission. The Contractor ensures that all information contained in all required reports submitted to City is accurate and support documentation shall be maintained.

8.3 Contractor 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, and other related information (collectively, the

"Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Additionally, if applicable, Contractor shall execute a HIPAA Business Associate Agreement in substantially the same form as shown in Attachment VI, which is intended to protect the privacy and provide for the security of Protected Health Information disclosed to each other pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws. Contractor 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, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 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 Contract. Upon expiration or early termination of this Contract, Contractor shall return to City all copies of materials related to the Project, including the Confidential Information.

8.4 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. 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, the 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.

8.5 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. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

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 expiration or early termination of this Contract, if requested by the City. 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 Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.

8.6 Ownership of Intellectual Property. Contractor and City agree that the Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes,

designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.

8.7 Within a period not to exceed 90 days from the expiration or early termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

8.8 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions within 60 days of execution of this Contract. Information required for submission shall include but may not be limited to:

- (A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
- (B) Current Bylaws and Charter;
- (C) Terms of Officers;
- (D) Amendments to Bylaws;
- (E) Schedule of anticipated board meetings for current Fiscal Year;
- (F) Minutes of board meetings that are approved by the Contractor's board; and
- (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

8.9 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 12.3 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 completed Certificate(s) of Insurance to the Managing City Department, which shall be clearly labeled "San Antonio Education Partnership – Dr. Manuel P. Berriozábal cafécollege Operations" 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 be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Managing City Department. 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 whereby 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 below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury d. Sexual Abuse / Molestation**	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
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
** Required for projects involving services to children	

(D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor 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 Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Contract for all purposes.

(E) 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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

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

- Name 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, or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

(G) 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.

(H) 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 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.

(I) 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.

(J) 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.

(K) 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.

(L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

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 CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY**

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

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.

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 CONTRACT.

XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

11.1 **SBEDA Program:** The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Contract are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to the SBEDA Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Contract. Unless defined in a contrary manner herein, terms used in this section of the Contract shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

11.2 **Definitions**

- **Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)
- **Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- **Certification or "Certified"** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the SBEDA Ordinance in Section III.E.6 of Attachment A.
- **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the

material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the City as fraudulent if Contractor attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Contractor shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Contractor and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

- **Evaluation Preference** – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime contractors or Respondents.
- **Good Faith Efforts** – documentation of the Contractor's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Contractor's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.
- **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]
- **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

- **Individual** – an adult person that is of legal majority age.
- **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- **M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.
- **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).
- **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:
 - **African-Americans**: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
 - **Hispanic-Americans**: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
 - **Asian-Americans**: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
 - **Native Americans**: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.
- **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.
- **Payment** – dollars actually paid to Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Contract, this term refers to the Contractor.

- **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.
- **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Contract, Contractor is the Respondent.
- **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- **Responsive** – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- **SBE Directory** - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.
- **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- **Small Business Office Manager** – the Assistant Director of the EDD of the City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.
- **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.
- **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the Contractor and its subcontractors shall be submitted to the City prior to execution of this Contract and any contract modification agreement.

- **Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Contractor's and/or S/M/WBE firm's performance and payment under City contracts due to the City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.
- **Subcontractor/Supplier Utilization Plan** – a binding part of this Contract which states the Contractor's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Contract, and states the name, scope of work, and dollar value of work to be performed by each of Contractor's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this Contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Contract to be approved by the EDD Director or designee.
- **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Contract is not inclusive of MBEs.

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

- (A) Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this Contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term.
- (B) Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers.
- (C) Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, Contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Contract.
- (D) Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form,

through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this Contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. A copy of the Contractor's Subcontractor / Supplier Utilization Plan is affixed hereto and incorporated herein for all purposes as Attachment V. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

- (E) Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its Contract with the CITY, as well as any transfer or change in its ownership or business structure.
- (F) Contractor shall retain all records of its Subcontractor payments for this Contract for a minimum of four years or as required by state law, following the conclusion of this Contract or, in the event of litigation concerning this Contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- (G) In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- (H) Contractor acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Contractor and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor will be performing under for this Contract.

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

- (A) **SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 5. (a), this Contract is being awarded pursuant to the SBE Subcontracting Program. Contractor agrees to subcontract at least ***twenty percent (20%)*** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Contractor submitted to City with its response for this Contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this Contract), and that contains the names of the certified SBE Subcontractors to be used by Contractor on this Contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Contract. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for SBE firm participation in the performance of a Commercially

Useful Function under the terms of its contract shall be a material breach and grounds for termination of the Contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Contract for violations of the SBEDA Ordinance, or under any other law; **and**

(B) M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this Contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least ***ten percent (10%)*** of its prime contract value to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Contractor submitted to CITY with its response for this Contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this Contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Contract. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the Contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Contract for violations of the SBEDA Ordinance, or under any other law.

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

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

the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Contract.

11.7 **Violations, Sanctions and Penalties.** In addition to the above terms, Contractor acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Contract to:

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

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

- Suspension of Contract;
- Withholding of funds;
- Rescission of Contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
- Refusal to accept a response or proposal; and
- Disqualification of Contractor or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XII. APPLICABLE LAWS

12.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.

12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition, Contractor agrees that Contractor shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration

Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by Contractor.

12.3 All of the work performed under this Contract by Contractor 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. 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/slrn/recordspubs/gr.html>
- Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>
- Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
- Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
- Texas Local Government Code can be found at <http://www.statutes.legis.state.tx.us/>

In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

12.4 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 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.

12.5 The Contractor warrants that any and all taxes that the Contractor 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 Contract. The Contractor 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.

12.6 Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and all regulations thereunder.

12.7 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if Contractor receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f),

Contractor shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of Contractor receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state's economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.

- 12.8 Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Contract as they may be promulgated.
- 12.9 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. If using City of San Antonio General Funds, expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.
- 12.10 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T thirty (30) days after Internal Revenue Service (IRS) deadlines for completion. If filing an extension, Contractor shall notify the City in writing of the extension and the anticipated date of filing with the IRS. Contractor shall submit the 990 or 990T to the Managing City Department no later than 30 days after the date of filing the form for which Contractor received an extension.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 The 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 the Contractor or the City. For breach or violation of this warrant, the 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.
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 Contractor acknowledges that it is informed that 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 “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that neither the 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, the 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 is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIV. TERMINATION

14.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if the Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract in whole or in part by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the tenth (10th) day following the day on which such notice is sent). The 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 the 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, the Contractor’s complete and satisfactory performance of its obligations for which final payment is sought.

14.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project would not produce desired results commensurate with the further expenditure of funds or if the City has insufficient revenue to satisfy the City’s liabilities hereunder. Such termination by City shall specify the date thereof, which date shall not be sooner than the thirtieth (30th) day following the day on which notice is sent. The 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 the thirtieth (30th) day following the day on which notice is sent. The 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 the 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, the Contractor’s complete and satisfactory performance of its obligations for which final payment is sought.

14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The 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 the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.

14.4 Should the Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City’s sole and absolute discretion, be grounds for termination for cause.

XV. PROHIBITION OF POLITICAL ACTIVITIES

15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, 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.

15.2 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.

15.3 The prohibitions set forth in sections 15.1 and 15.2 of Article XV 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.

15.4 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 the Managing City Department. Contractor shall list the name and number of a contact person from the Managing City Department on the statement that Contractor's personnel can call to report said violations.

15.5 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 the City's discretion, be withheld until the situation is resolved.

15.6 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.

XVI. PERSONNEL MANAGEMENT

16.1 The 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.

16.2 Contractor is permitted to pay its full time employees funded through this Contract for the total number of holidays authorized by the City Council for City employees. If the 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.

16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department.

16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization funded through this Contract.

16.5 The Contractor agrees to provide the 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.

16.6 At the sole discretion of the Director of the Managing City Department, 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, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. 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.

16.7 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.

XVII. ADVERSARIAL PROCEEDINGS

17.1 Contractor agrees to comply with the following special 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 the City or any other public entity; and
- (B) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

18.1 Contractor shall publicly acknowledge that this Project is supported by the City of San Antonio, Department of Human Services. Throughout the term of this Contract, Contractor agrees to include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers,

brochures and other informational material prepared and distributed by Contractor. Contractor shall obtain the City's prior approval of the language and logo, as applicable, to be used.

XIX. EQUIPMENT

19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at Contract's expiration or early termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon expiration or early termination of this Contract. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.

19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.

19.3 Contractor shall maintain records on all items obtained with City funds to include:

- (A) A description of the equipment, including the model and serial number, if applicable;
- (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
- (C) An indication of whether the equipment is new or used;
- (D) The vendor's name (or transferred from);
- (E) The location of the property;
- (F) The property number shown on the property tag; and
- (G) A list of disposed items and disposition

19.4 The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the equipment/property having been lost, stolen, missing, damaged and/or destroyed. The report submitted by the Contractor to the Managing City Department shall minimally include:

- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.5 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.

19.6 The Contractor shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

XX. TRAVEL

20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present and approved in the budget.

20.2 Contractor agrees that mileage reimbursement paid to Contractor's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with Internal Revenue Service (IRS) rules. Contractor further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City. Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

20.3 Contractor agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Contract, Contractor shall 1) provide City with detailed documentation of such business travel expense(s), 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such, and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

21.1 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.

XXII. DEBARMENT

22.1 Contractor 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.

22.2 Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the Contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXIII. ASSIGNMENT

23.1 Contractor shall not assign nor transfer Contractor's interest in this Contract or any portion thereof without the written consent of the City Council of San Antonio, 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.

XXIV. AMENDMENT

24.1 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 Director of the Managing City Department 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, and in the following circumstances:

(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 increasing funding and 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 Scope of Work and SA2020 Scorecard set forth in Attachment I hereto due to the adjustment described in subsection (A) of this Section or for any other reason, so long as the terms of the amendment are reasonably within the parameters set forth in the original Scope of Work and SA2020 Scorecard;

(C) budget shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged (these modifications may be accomplished through Budget revisions);

(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 Director of the Managing City Department;

(E) reduction of the total Contract amount in order to comply with the match requirement expenditure ratio set forth in Section 3.3, and to amend the budget accordingly which is set forth in Attachment II hereto. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 24.1(E); or

(F) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

XXV. SUBCONTRACTING

25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City and Grantor of the grant source, if so required by said Grantor.

25.2 Contractor must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, state and federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.

25.3 Any work or services for sub-contracting hereunder, shall be sub-contracted 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 Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.

25.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program.

XXVI. OFFICIAL COMMUNICATIONS

26.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and delivered in person, mailed by overnight or express service or 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

Contractor:

Executive Director/CEO/President
San Antonio Education Partnership
131 El Paso St.
San Antonio, Texas 78204

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.

XXVII. VENUE

27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, 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. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

XXVIII. GENDER

28.1 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.

XXIX. AUTHORITY

29.1 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 Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in its 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 Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

XXX. LICENSES AND TRAINING

30.1 Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided hereunder.

XXXI. INDEPENDENT CONTRACTOR

- 31.1 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 the City shall in no way be responsible therefor, 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.
- 31.2 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.
- 31.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor 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 Contractor.

XXXII. SEVERABILITY

- 32.1 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 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.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered "high profile" as that term is defined in the City of San Antonio Procurement Policy and Procedures Manual.

- 33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the City from the time the City begins discussions or negotiations, and ending on the 30th calendar day 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. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 33.2 Contractor acknowledges that the City has identified this Contract as high profile.
- 33.3 Contractor warrants and certifies, and 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 signer of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXXIV. ENTIRE CONTRACT

34.1 This Contract and its attachments, if any, 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:

Melody Woosley
Director, Department of Human Services

CONTRACTOR:

Adriana Contreras
Executive Director

APPROVED AS TO FORM:

City Attorney

Board President (if required by agency)

ATTACHMENTS

- Attachment I – Scope of Work and SA2020 Scorecard
- Attachment I – A – Service Level Agreement
- Attachment II – Budget
- Attachment III – Funding Guide
- Attachment IV – Contract Monitoring Report
- Attachment V – SBEDA - Subcontractor / Supplier Utilization Plan
- Attachment VI – HIPAA Business Associate Agreement

Attachment I
Scope of Work

Contractor shall operate and manage, with the collaboration of local educational institutions and non-profit agencies, Dr. Manuel P. Berriozábal cafécollege ("Center") for the purpose of providing college access and success services (as further described below) to San Antonio students, parents and adult learners in accordance with the following provisions:

1. Website:
 - a. Contractor shall maintain and update and arrange for the hosting of a student-focused website for the Center utilizing the latest tools, media and social networking sites along with links to resources applicable to college access, financial aid, and college success services. Contractor agrees to remove any materials or information that the City, within its sole and absolute discretion, finds inappropriate or unacceptable.
 - b. Contractor shall enter into necessary agreements to design, develop, maintain and host the website throughout the term of this Contract, and budget accordingly. Contractor shall provide to the City for its approval a copy of all agreements and any renewals pertaining to the Center website prior to their execution. Contractor agrees to incorporate within each agreement provisions that acknowledge that the City is a third party beneficiary of those agreements and that, if the City were to terminate its agreement with Contractor, the City has the same right to, without limitation, all services, information and claims that Contractor has the right to or possesses under the agreements, and that no subsequent legal instrument shall be necessary for the City to claim a right or benefit thereunder. Contractor agrees that it will no longer have website design, maintenance or update access following a termination of this Contract and that all information and methods of access pertaining to the website shall be transferred to the City (including, but not limited to, the registered URL of the website and the right to renew the registration) without retention by Contractor. Contractor shall provide City with the website source code and the Managing City Department's Information Technology staff member with access to design and development. Contractor shall also provide City with a digital copy of all website materials once published. The website shall be accessible by students 24 hours a day, 7 days a week, with updates every 30 days. City allows for reasonable times when the systems will be down for maintenance or trouble shooting. Contractor shall develop, update and follow procedures for monitoring the website for inappropriate content posted by students and their families, including within the procedures a process for deletion of unacceptable content as appropriate. The website shall contain at a minimum:
 - i. Notifications of upcoming local events, including the Saturday FAFSA(s) workshops/seminars;
 - ii. Interactive components, such as, but not limited to, info@saedpartnership.org email address, links to webinars, and Center workshop registration pages;
 - iii. Educational, career planning, financial aid, and college persistence and graduation tools and resources; and
 - iv. Links to collaborator and other appropriate sites, such as to colleges and local (youth and family social service organizations) and national resources.
 - v. Information about Predatory FAFSA sites and services
 - vi. Links to available scholarship websites
 - vii. Additional Pages on local scholarships
 - viii. Parents' page
 - ix. Students' Page
 - x. Timeline and "How To" complete steps for Freshmen - Seniors
 - xi. Bilingual video of FAFSA to include an explanation of FAFSA

2. Site Development and Lease:

- a. Contractor agrees to accept commercially reasonable terms of a lease from the City, the terms of which shall cover Contractor's obligations with regard to permitted uses, parking, safety and responsibility for paying the costs of security, custodial services, utilities and maintenance of interior and exterior to include landscaping, among other things. Notwithstanding the terms of the lease between Contractor and the City, Contractor agrees that it is responsible for the cost of maintenance of the exterior, including all landscaping costs.
- b. Contractor agrees to include line item(s) within its Budget for costs associated with facility use. Contractor also agrees to permit the City to deduct from Contractor's Contract Budget any monthly costs owed to the City under the forthcoming lease and to reduce Contractor's budget accordingly.

3. Media and Outreach Efforts:

- a. Contractor shall continue media and outreach campaign to advertise Center hours of operation, programs, services and other resources.
- b. Contractor shall host open house events for targeted groups.
- c. Contractor shall develop additional media ideas including print, billboard signage, advertising and social marketing sites and submit the same ideas for the City's approval.

4. Global Elements of Center: Contractor shall maintain, staff and monitor a cyber cafe-style setting with digital picture and video boards, a computer lab, areas for posting and displaying information, a reception area, workshop space, offices, conference rooms, equipment room, restrooms and break rooms.

5. Hours of Operation: Contractor shall staff to accommodate students, parents and adult learners' schedules and shall operate the Center's hours as follows:

Tuesday -Thursday: 8:00 a.m. to 7:00 p.m.

Friday: 8:00 a.m. to 5:00 p.m.

Saturday: 8:00 a.m. to 5:00 p.m.

Contractor shall obtain the approval of the Managing City Department prior to any change in the hours of operation.

6. Staffing:

- a. Contractor shall maintain staffing during the Hours of Operation at levels adequate to provide intake, coordination, workshops, one-on-one meetings with students and parents, data input, tracking, follow-up, information technology, college access advising and transition coaching, but no less than one (1) College Access Center Manager who shall serve as a site manager to oversee day-to-day operations, scheduling and building a network of providers and volunteers to offer services and workshops, one (1) dedicated Intake Specialist and four (4) College Access and Success Advisors.
- b. Contractor shall maintain adequate bi-lingual staffing to accommodate Spanish speaking clients.

7 . Intake Services: Contractor shall employ a bi-lingual Intake Specialist to coordinate walk-ins and scheduled clients, to perform a one-on-one needs assessment upon a student's initial visit to the Center, and to assign the student and family to a College Access and Success Advisor for further assessment.

8. One-On-One Assessment Services:

- a. College Access Assistance: Contractor shall schedule and conduct one-on-one sessions with students and families, ensuring student tracking and follow-up, and covering areas such as, but not limited to:
 - i. researching colleges / universities;
 - ii. college application assistance;
 - iii. securing letters of recommendations;
 - iv. college entrance exam registration, preparation and simulation exercises;
 - v. the purpose of TSI , the meaning of test results and future planning based upon those results; and

- vi. career planning.
- b. Financial Aid Assistance: Contractor shall schedule and conduct one-on-one financial aid assistance sessions with students and families, ensuring student tracking and follow-up, covering areas such as, but not limited to:
 - i. Federal Student Aid Identification number FSA ID) application and accessing Student Aid Report (SAR);
 - ii. Free Application for Federal Student Aid (FAFSA) application;
 - iii. Texas Application for State Financial Aid (TASFA) application;
 - iv. Expected Family Contribution (EFC);
 - v. Understanding financial aid award packages;
 - vi. scholarship programs;
 - vii. Volunteer Income Tax Assistance (VITA) availability during SASA, when available as determined by COSA department managing VITA;
 - viii. Other savings strategies, such as earning college credit in high school via Advanced Placement and dual credit programs.
- c. Develop and implement a series of Saturday FAFSA workshops/seminars
- d. College Success Assistance: Contractor shall schedule and conduct one-on-one sessions with students and families, ensuring student tracking and follow-up, and covering such areas such as, but not limited to:
 - i. Enrolling in college
 - ii. Registering for and selecting classes
 - iii. Transferring to a university
 - iv. Choosing a major
 - v. Reapplying for financial aid
 - vi. Engaging in campus and with faculty
 - vii. Student success skills
 - viii. Resume and career preparation

9. Group Forums or Workshop Services:

- a. College Access: Contractor shall provide college access and success workshops covering areas such as, but not limited to:
 - i. colleges, universities and degree programs;
 - ii. college application assistance;
 - iii. essay writing;
 - iv. resume writing;
 - v. exam preparation;
 - vi. basic skills review;
 - vii. college timelines; and
 - viii. college success skills.
- b. Financial Aid: Contractor shall provide financial aid group forums and workshops covering areas such as, but not limited to:
 - i. financial aid basics;
 - ii. FAFSA basics;
 - iii. understanding EFC and SAR;
 - iv. costs of a college education;
 - v. scholarships;
 - vi. higher education savings plans; and
 - vii. financial literacy.
- c. College Success:
 - i. college registration and enrollment
 - ii. transfer process
 - iii. college major vs professional career

- iv. financial aid and student debt
- v. financial literacy
- vi. campus engagement
- vii. student success skills
- viii. Professional career preparation

10. "Stop-Out" Outreach: Contractor shall conduct specific outreach activities targeted at clients who have stopped pursuing attainment of a college or university degree (referred to as "stop-outs") and facilitate their return to college by offering all of the same services to first time college attendees and by providing information and referrals to address their unique challenges (e.g., child care, housing, elderly care, etc.).

11. Collaboration: Contractor shall promote, arrange and host visits from representatives from San Antonio area colleges and universities as well as state- and national institutions and organizations on issues ranging from general application and admissions to financial aid and scholarship processes.

12. Referrals: Contractor shall maintain a directory of outside service providers, including youth and family social service organizations, establish a collaborative relationship with commonly used providers and refer students and families as appropriate based upon the initial one-on-one needs assessment or later assessment, whether formal or informal. Contractor shall establish procedures for, and perform, follow-up, working with the student or family on a plan of action or strategies to deal with the particular challenge they are facing.

13. Computer Lab: Contractor shall maintain and update a minimum of 32 desktop computers with online access, incorporating adequate site controls, current office-type software, printing capabilities, adequate servers, and information technology security, and in accordance with the Service Level Agreement that is attached and incorporated herein for all purposes as Attachment I – A. Contractor shall staff the lab for the purposes of monitoring and providing assistance with the specific needs of the clients present.

14. Data Systems Management Plan: Contractor shall develop and implement a data systems management plan including hardware, software, security plan, other major system features, and in accordance with the Service Level Agreement that is attached and incorporated herein for all purposes as Attachment I – A, and provide standard monthly reports to the City for services administered.

15. Call center: Contractor shall establish and provide access to a dedicated telephone help line to the Center.

16. VITA services: Contractor shall permit City staff and Volunteer Income Tax Assistance (VITA) volunteers to use designated space at the Center for the purpose of offering VITA services during the income tax season. Contractor shall also advise clients of the availability of other VITA sites. Additionally, Contractor shall attend VITA volunteer training sessions, if possible when staff availability permits, to provide volunteers with valuable information regarding financial aid assistance and the Center in general so that the information may be relayed to families.

17. Tours: Contractor shall schedule and offer tours to educational stakeholders, students and their families.

18. Quality Assurance Plan: Contractor shall develop and implement a quality assurance plan to ensure the delivery of quality services to clients in a timely and efficient manner.

19. Meetings and Presentations: Contractor's representatives shall attend meetings with City staff relating to administration and performance pursuant to the Contract, and shall make presentations as requested by the City at meetings, including, but not limited to, before City Council and its subcommittees.

ITSD

CaféCollege and the San Antonio Education Partnership Service Level Agreement

Version 4.2

City of San Antonio/ITSD PMO

Document Information

Authors: Cynthia Ramirez, Interim Business Relationship Manager

Document Name: CaféCollege Support and Service Level Agreement
 Last Saved: Wednesday, September 02, 2015

Section
1

Program Information / History

Program Name
CaféCollege and San Antonio Education Partnership (SAEP)
Program Aliases/Nicknames/Keywords
Café College
Date Program Went Live
2010
High Level Summary of Program Purpose
CaféCollege is run by the San Antonio Education Partnership. Computer equipment is provided by the City of San Antonio Department of Human Services and Information Technology Services Department. This document serves as a guide to identify roles and responsibilities for all agencies involved with the following: <ul style="list-style-type: none"> • San Antonio Education Partnership- Public Facing computers to include the lab and College Advisor's computers • San Antonio Education Partnership – Administrative Area
Program Status
Active
Program Users
General public seeking college access assistance Staff hired by the San Antonio Education Partnership Program
Divisions within Department(s) Using System
N/A
System Hosting Site
There are two servers associated with CaféCollege. SAEP2008ts.sa-ep.local and SAEP2008sbs . SAEP2008ts.sa-ep.local is a virtual server that resides at COSA ITSD Data Center (515 S. Frio). SAEP2008SBS is a Small Business Server maintained by SAEP in coordination with IT Contractor and is located in the computer room at CaféCollege(131 El Paso).
System Software Client Type
N/A
Department POC/Super User/Subject Matter Expert Name and Phone Number
Cynthia Ramirez –Business Relationship Manager for COSA ITSD – 210-207-0518 Kat Muniz – Senior Data Analyst – San Antonio Education Partnership – 210-207-4772 Eddie Martinez – Office Manager – San Antonio Education Partnership- 210-207-4766 Shawn Patterson – IT Support – SAEP in coordination with IT Contractor Technology Solutions – 210-930- 6960

Data Classification / Sensitive Information Status	
Sensitive information is present	

Section
2

Service Availability

This section lists the times when the service should be available.

Table 2.1 Service Availability*

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Normal Business Hours							
Start	-	0745	0745	0745	0745	0745	0745-
Stop	-	2000	2000	2000	2000	2000	1200-

* This is the standard availability defined by CaféCollege. Do not change the hours of service availability without talking to the Interim BRM, Cynthia Ramirez, 207-0518.

Section
3

CaféCollege/San Antonio Education Partnership Program Service Level

DHS, SAEP and ITSD completed the investigation of all connections between computers owned by SAEP and the City on June 4, 2015 and again on June 11, 2015 at the CaféCollege location at 131 El Paso. Results of investigation have been incorporated into this SLA.

CaféCollege Public Facing Building

- **City of San Antonio (COSA)/Information Technology Services Department (ITSD) Responsibilities:**
 - Provide support for all network infrastructure (cabling, network switches, wireless access points, Voice over IP (VOIP) phones and Internet connectivity)
 - Provide hardware replacement (i.e. monitors, keyboards, harddrive, mice) support only for 32 (public facing) computers detailed in Equipment Inventory on page 5 of this SLA.
 - Responsible for replacement of 32 computers every 5 years using standard City computer equipment replacement process.
 - Provide operating system Windows 7 and Office 2007 software (upgrades and updates to the operating system and office suite will be purchased and handled through SAEP in coordination with IT Contractor)
 - Provide installation and updates of Deep Freeze software
 - Provide SAEP with Administrator access to all computers so that SAEP can perform the responsibilities identified below.
- **San Antonio Education Partnership Responsibilities**
 - Provide antivirus software support to include updates and upgrades to lab computers through SAEP in coordination with IT Contractor

- SAEP in coordination with IT Contractor will be responsible for the Windows operating system and Office suite's upgrade and updates
- SAEP will be responsible for keeping an inventory sheet of all devices

CaféCollege iPads for Advisors (7)

- **San Antonio Education Partnership Responsibilities**
 - SAEP will be responsible for keeping an inventory sheet of all devices
 - iPad distribution, set up, updates and monitoring will be handled by SAEP in coordination with its IT Contractor.
 - SAEP in coordination with its IT Contractor will create, maintain and document the Apple accounts required to utilize the devices
- **City of San Antonio, Department of Human Services (DHS) and ITSD Responsibilities**
 - These devices are not part of the replacement program. DHS will replace the device when the device has reached "out of life" status

CaféCollege San Antonio Education Partnership Administration Building

- **COSA ITSD responsibilities**
 - Provide support for internet and VOIP system to include hardware replacement of handsets (phones)
- **San Antonio Education Partnership Responsibilities**
 - Responsible for all hardware and software devices in the SAEP administrative area
 - Responsible for all printer hardware and replacement in the Café College location
 - There are four (4) COSA-provided projectors on the COSA inventory list. These devices are not part of the replacement program. DHS will replace the device when the device has reached "out of life" status
 - SAEP in coordination with IT Contractor will be responsible for adding new users. SAEP will contact their IT Contractor to request a new user to be added.

There are two servers associated with CaféCollege. **SAEP2008ts.sa-ep.local** and **SAEP2008sbs**. SAEP2008ts.sa-ep.local is a virtual server that resides at COSA ITSD Data Center (515 S. Frio). SAEP2008SBS is a Small Business Server maintained by SAEP in coordination with IT Contractor and is located in the computer room at CaféCollege (131 El Paso). Security software that will be used is WebRoot. This software will be maintained and updated by SAEP in coordination with IT Contractor.

Applications from saep2008ts.sa-ep.local will be migrated to saep2008SBS. SAEP2008ts.sa-ep.local will be decommissioned by COSA ITSD. Patches, upgrades, new user logins, and file shares involving SAEP2008SBS server will be handled by SAEP in coordination with IT contractor. Infrastructure that has been put in place by COSA ITSD is a network switch that provides internet usage. If internet is not available, contact 210-207-8888 and create an incident. Contact Interim BRM Cynthia Ramirez at 210-207-0518.

Applications on the server:

Quickbooks- SAEP in coordination with IT Contractor will be responsible for maintenance, and upgrades of this application.

Labtech- is software that runs on the server and workstations. It collects hardware/software/performance information about those devices and sends it to a server at the Barcom office (over the Internet). IT Contractor for SAEP will use either LabVNC or ScreenConnect to remotely access and manage the server/workstations onsite as needed. IT Contractor for SAEP can access Labtech through a "Control Center" application (for Barcom use only) or through a web app hosted on our server (<http://labtech.barcoment.com>) which provides minimal access, including remote access, to our technicians and to our end users.

Café College Inventory of Computer Equipment (City Owned)

Computers and iPads- DHS purchased the 32 desktops and 7 iPads to be used by SAEP staff and the public (classrooms). Computers and iPads will be replaced by DHS when the devices have reached end of life (iPads) or after five (5) years (desktops).

Issues with the computers such as:

- Hard drive
- Monitor
- Keyboard
- Mouse
- Internet not working

Please call 210-207-8888 and have an incident created. Contact Interim Business Relationship Manager, Cynthia Ramirez at 210-207-0518.

Each computer will have the following software:

- Windows 7 Professional
- Office 2007
- Deep Freeze (this software resets the classroom computers to its original installation daily)
- Adobe Professional
- WebRoot Antivirus software

Equipment Inventory:

There are a total of 32 computers that will be placed:

27 Computers are for the following:

- 13- Lab computers
- 8 -Advisors (includes 2 new workstations being installed inside cafécollege
- 1 -Program Manager, Café College
- 2 -Front Lobby
- 3 - Classroom 1, 2 and 3 (one each)

5 computers will be placed in Conference room. 4 which will be converted into cubicles

7 iPad's will be issued to the Advisors-

To purchase new computers- contact Interim BRM, Cynthia Ramirez or the DHS Fiscal Administrator Ed Gil Najarro at 207- 5844

Updates to antivirus software on computers will be handled by SAEP in coordination with IT Contractor
Computer updates will be handled by SAEP in coordination with IT Contractor

Setting up all 32 computers at CaféCollege location will be handled by SAEP in coordination with IT Contractor

Issues with:

Network: If internet is not functioning, contact ITSD Help Desk 207-8888 and submit a request. Contact Interim BRM Cynthia Ramirez at 207-0518

Printers: Printer mapping, scan folder, network mapping, new drivers will be handled by SAEP in coordination with IT Contractor; Administrator access will be provided by COSA ITSD. Maintenance contract for ink, toner and any other printing supplies will be handled by SAEP in coordination with IT Contractor

SAFreeWiFi: If WiFi is not working, contact ITSD Help Desk 207-8888 and submit a request. Contact Interim BRM Cynthia Ramirez 210-207-0518

Deep Freeze Software: Contact the ITSD Help Desk at 207-8888 and submit a request. Contact Interim BRM Cynthia Ramirez at 207-0518

Document History

Date	Version	Comment
6/23/15	1.0	First draft
6/24/15	2.0	Received feedback from Dewon Johnson and Edward Gonzales
6/26/15	3.0	Distribute Second draft
7/7/15	4.0	Feedback received
7/29/15	4.1	SAEP response received
7/29/15	4.2	Track changes accepted by CRamirez

Approvals:

This document has been reviewed and approved on 7/30/15 by the following:

Name	Title	Organization
Kevin Goodwin	Assistant Director	City of San Antonio Information Technology Services Department
Dewon Johnson	Sr. IT Manager, Client Services	City of San Antonio Information Technology Services Department
Randy Schneider	Sr. IT Manager, Service Desk	City of San Antonio Information Technology Services Department
Richard Keith	Assistant Director	City of San Antonio Department of Human Services

Glossary

Acronym	Definition
BRM	Business Relationship Manager
DHS	Department of Human Services
COSA	City of San Antonio
IT	Information Technology
ITSD	Information Technology Services Department
SAEP	San Antonio Education Partnership
SLA	Service Level Agreement

WITNESSETH:**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio (“Covered Entity”), and San Antonio Education Partnership, a Business Associate (“BA”).

WHEREAS, the City of San Antonio and BA have entered into a delegate agency contract for Dr. Manuel P. Berriozábal cafécollege Operations services (“Service Contract”), effective October 1, 2015; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) “Individual” shall have the same meaning as the term “Individual” in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) “Parties” shall mean Covered Entity and BA.

(4) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards to protect such information;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

- (9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
- (11) Will immediately, and in no event later than 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of October 1, 2013, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
 - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
 - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

H. Survival. The respective rights and obligations of the BA under Sections B, C(2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*

M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the

Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective October 1, 2015, by the **City of San Antonio**, signing by and through its Director of the Department of Human Services.

COVERED ENTITY
By City of San Antonio

BUSINESS ASSOCIATE:
San Antonio Education Partnership

By: _____

By: _____

Print Name: Melody Woosley

Print Name: Adriana Contreras

Print Title: Director, Department of Human Services Print Title: Executive Director

APPROVED AS TO FORM:

Shreya Shah
Assistant City Attorney

The Carver 2015-2016 Performance Season					
The City of San Antonio will sponsor the following performing events. The City of San Antonio will support the artistic fee for the performer's expenses up to \$197,250. Ticket Revenues will be deposited with the City of San Antonio.					
Date	Performance	Contract Value	Management Company	Venue	Discipline
Saturday 10/17/2015	Urban Bush Women	\$25,000	IMG Artists	Jo Long Theatre	Dance
Saturday 11/7/2015	Robert Cray	\$22,000	WME Entertainment	Jo Long Theatre	Music
Saturday 12/12/2015	Jones Family	\$6,750	International Music Network	Jo Long Theatre	Music
Saturday 1/23/2016	Monterrey Jazz on Tour	\$23,000	The Kurland Agency	Jo Long Theatre	Music
Fri-Sun 1/29-2/6/2016	The Renaissance Guild- Divas of Eastwood	\$10,000	The Renaissance Guild	Little Carver	Theatrical
Saturday 3/12/2016	Jazz In Pink	\$15,000	Tour Management	Jo Long Theatre	Music
Fri-Sat 4/8-4/9/2016	Arte y Pasión	\$12,000	Tamara Adira	Jo Long Theatre	Dance
Saturday 4/30/2016	Lisa Fischer	\$20,500	Columbia Artists Management, LLC	Jo Long Theatre	Music
Friday 5/13/2016	Alfredo Rodriguez Trio	\$8,000	Unlimited Myles, Inc.	Jo Long Theatre	Music
Saturday 5/28/2016	Savion Glover and Jack Dejohnette	\$30,000	Columbia Artists Management, LLC	Jo Long Theatre	Dance
Saturday 6/04/2016	Sheila E.	\$25,000	Wenig-LaMonica Associates, LLC	Jo Long Theatre	Music
	Total	\$197,250			

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 Director of the Managing City Department, pursuant to Ordinance No. _____ dated _____, 2015 and _____ (hereinafter referred to as "CONTRACTOR") for the services of _____ (hereinafter referred to as "ARTIST").

WHEREAS, CITY wishes to arrange for CONTRACTOR to furnish the services of ARTIST to perform "_____"(the "Production") at _____ located at _____, (hereinafter referred to as "Theater"); and

WHEREAS, CONTRACTOR wishes to furnish the services of ARTIST to perform the Production at the Theater; NOW THEREFORE, in consideration of the promises, covenants and conditions contained herein, the parties, intending to be legally bound, agree as follows:

I. PERFORMANCE BY CONTRACTOR AND ARTIST

1.1 CONTRACTOR hereby agrees to furnish the services of ARTIST to perform services according to the terms and conditions below:

- a. Presenter of Engagement: City of San Antonio
Carver Community Cultural Center
226 N. Hackberry Street
San Antonio, Texas 78202
- b. Performance Days, Dates and Time: Date @ Time
Name of Venue:
Venue Address:
San Antonio, Texas
- c. CITY contact person and phone: Tracy Alva, Management Analyst
(210) 207-2718
- d. Name and description of Group/Production:
- e. Number and length of Engagement:
- f. Set up and load out specifications: Technical rider must be received by CITY no later than (4) weeks prior to the performance date set forth in section 1.1(b).

II. PERFORMANCE BY CITY

2.1 CITY agrees to provide CONTRACTOR's ARTIST with the following:

- a. Theater and stage specifications: A venue that is well heated or cooled as applicable, lighted and clean, with dressing facilities for the ARTIST.
- b. Sound equipment: Technical rider must be received by CITY no later than four (4) weeks prior to the performance date set forth in section 1.1(b).
- c. Lighting equipment: Technical rider must be received by CITY no later than four (4) weeks prior to the performance date set forth in section 1.1(b).
- d. Other Equipment Requirements: Technical rider must be received by CITY no later than four (4) weeks prior to the performance date set forth in section 1.1(b).
- e. Transportation: Ground transportation 1) to and from airport and hotels and 2) to engagement sites.
- f. Housing: Accommodations to be made and paid by CONTRACTOR or ARTIST, as applicable.

III. COMPENSATION

3.1 CITY shall pay to CONTRACTOR or ARTIST, as directed by CONTRACTOR, a fixed fee as follows:

- a. \$ _____ .00 paid to the name of _____ by CITY check to be received on or before _____, 20____, or as soon as feasibly possible.

IV. COPYRIGHT INDEMNIFICATION

4.1 CONTRACTOR agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of copyrighted materials in the Carver Community Cultural Center during the term of the CONTRACTOR'S CONTRACT complies with federal copyright law and any other applicable copyright law.

4.2 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY, and its elected officials, officers, directors, volunteers and representatives of the CITY, individually or collectively from and against any and all suits, actions, legal proceedings, claims, demands, damages, penalties, costs, expenses, fees, fines, liability and attorney's fees arising out of infringement of copyright or trademark on any work used in any way in connection with this CONTRACT.**

V. BOX OFFICE

5.1 CITY shall be responsible for all sales of tickets for the performance(s) set forth in Article I of this performance CONTRACT. CITY shall provide complimentary tickets to CONTRACTOR for the performance(s) upon CONTRACTOR'S request, not to exceed ten complimentary tickets.

VI. PROMOTION AND PUBLICITY AND PROGRAMS

6.1 CITY agrees to provide publicity material consisting of printed material and advertising arrangements for any press release or broadcast announcements to be made and such programs necessary for the performance, except that CONTRACTOR shall provide all such materials that it may have in its possession that may be of use to CITY for its publicity campaign and marketing efforts, including but not limited to, a Press Kit. If CONTRACTOR has a videotape promotion, color slide and/or photographs of the performance provided for in this CONTRACT, CONTRACTOR shall submit to CITY such items on or before the execution date of this CONTRACT.

VII. TERMINATION

7.1 Should the CONTRACTOR, or the ARTIST, fail to fulfill, in a timely and proper manner his respective obligations under this CONTRACT or if the CONTRACTOR or ARTIST neglects or fails to perform any of the terms, conditions, covenants or guarantees of this CONTRACT or of any amendment hereto as solely determined by CITY, the CITY shall have the right to terminate this CONTRACT by sending written notice to the CONTRACTOR of such termination and specify the effective date thereof. Prior to such notice of termination, the CITY shall give written notice of the CONTRACTOR or ARTIST's failure or violation and the CONTRACTOR shall have fourteen (14) days from receipt of such notice to remedy such failure or rectify such violation. At the end of the period for remedy, if the CITY remains dissatisfied with the CONTRACTOR's attempt to remedy, the CITY shall give CONTRACTOR ten (10) days written notice of termination. Notwithstanding the above, the 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 the CITY may withhold funds otherwise due as damages.

7.2 In the event that CITY finds that CONTRACTOR has booked another performance engagement by ARTIST in, or within 100 miles, of the City of San Antonio, Texas within a twelve (12) month period of the ARTIST's scheduled performance date(s) set forth in this CONTRACT, then, at the CITY's option, the CITY have the right to terminate this CONTRACT in accordance with the procedures set forth in Section 7.1. However, CITY shall not be obligated to provide the notice and cure period set forth in Section 7.1 if the date on which the CITY obtains information of the other engagement is less than thirty (30) days from the performance scheduled pursuant to this CONTRACT. If any funds are advanced to CONTRACTOR by CITY in accordance with Section 3.1 (a) of this CONTRACT, CONTRACTOR agrees to return to CITY all such funds no later than three (3) days from the date the CONTRACTOR receives notice of the CITY's termination pursuant to this section.

VIII. NON-DISCRIMINATION

8.1 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.

IX. AMENDMENT

9.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR and in the case of substantive amendments shall be evidenced by passage of a subsequent CITY ordinance, as to CITY's approval.

X. ASSIGNING INTEREST

10.1 CONTRACTOR shall not transfer or assign any interest in this CONTRACT, nor delegate the performance of any duties hereunder by subcontract or otherwise without the prior written consent of CITY.

XI. INDEMNITY

11.1 CONTRACTOR 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 directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, 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 performance of the rights or duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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.

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

11.2 **Defense Counsel** - CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within seven

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

11.3 **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.

XII. RELATIONSHIP OF THE PARTIES

12.1 CITY and CONTRACTOR mutually agree that CONTRACTOR acts in the capacity of an independent contractor and that nothing contained herein shall be construed by either party hereto or by any third party as creating the relationship of principal and agent, partners, joint venture or any other similar such relationship between the parties hereto.

12.2 CITY and CONTRACTOR understand and agree that neither party to this CONTRACT has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XIII. IMPOSSIBILITY OF PERFORMANCE

13.1 Neither the CONTRACTOR nor the CITY shall be liable for any failure to appear or perform in the event that such failure is caused by the physical disability of the ARTIST, or acts or regulations of public authorities, labor difficulties, civil tumult, strike, epidemic, interruption of travel service, or any other cause beyond the control of the CONTRACTOR or the CITY. The party prevented from performing shall advise the other party immediately of such valid inability to perform. In the event that ARTIST is prevented from performing pursuant to this Article, if any funds are advanced to CONTRACTOR by CITY in accordance with Section 3.1 of this CONTRACT, CONTRACTOR agrees to return to CITY all such funds at the time of CONTRACTOR's notification to the CITY of ARTIST's inability to perform. If the CITY is prevented from performing pursuant to this Article, if any funds are advanced to CONTRACTOR by CITY in accordance with Section 3.1 (a) of this CONTRACT, CONTRACTOR agrees to return to CITY all such funds no later than three (3) days from the date the CONTRACTOR receives notice from the CITY of CITY's inability to perform.

XIV. INSURANCE

14.1 CONTRACTOR shall be responsible for insuring its employees and sub-contractors for Worker's Compensation or Alternative Plan. If a Worker's Compensation Policy is maintained, then for the duration of this CONTRACT, CONTRACTOR will attach a waiver of subrogation in favor of the CITY.

14.2 CONTRACTOR shall be responsible for insuring its own Property, Equipment, Autos and for obtaining its own legal liability coverage. In no event will the CITY be required to maintain any insurance coverages for CONTRACTOR.

XV. CONFLICT OF INTEREST

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

15.2 Pursuant to section 15.1 of this CONTRACT, CONTRACTOR warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. CONTRACTOR further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XVI. NOTICES

16.1 For purposes of this CONTRACT, all official communications and notices between the parties shall be deemed sufficient if in writing, mailed, certified mail, postage prepaid, to the addresses set forth below:

CITY

Carver Community Cultural Center
ATTN: Management Analyst
226 N. Hackberry St.
San Antonio, Texas 78202

and

City of San Antonio
City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

CONTRACTOR

XVII. SEVERABILITY

17.1 In case any one or more of the provisions contained in this CONTRACT 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 thereof and this CONTRACT shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XVIII. CAPTIONS

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

XIX. JURISDICTION

19.1 THIS CONTRACT IS PERFORMABLE IN BEXAR COUNTY, TEXAS AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue for all causes of action under this CONTRACT shall be the federal and state courts located in Bexar County, Texas.

XX. LAWS

20.1 CONTRACTOR understands and agrees to abide by and adhere to all applicable federal and state laws, rules and regulations and City of San Antonio ordinances.

XXI. SPECIAL PROVISIONS

21.1 Under no circumstances will the funds received under this CONTRACT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY or any other public entity.

21.2 During the term of this CONTRACT, if CONTRACTOR files and/or pursues an adversarial proceeding against the CITY then, at the CITY'S option, this CONTRACT and all access to the funding provided for hereunder may terminate if CONTRACTOR is in violation of Section 21.1 of this CONTRACT.

21.3 CONTRACTOR, at the CITY'S option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.

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

XXII. ENTIRE AGREEMENT

22.1 This CONTRACT is intended as a full and complete expression of and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written are merged and incorporated into this CONTRACT, and no such

oral or written understanding, agreements, promises, representations, terms or conditions not specifically set forth in this CONTRACT shall be binding upon the parties.

XXIII. GENDER

23.1 Words of gender used in this CONTRACT 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.

XXIV. AUTHORITY

24.1 The signers of this CONTRACT, by placing their signature below, represent and warrant that they have full authority to execute this CONTRACT on behalf of the respective party each represents.

IN WITNESS WHEREOF, we have affixed our signature hereto.

CITY OF SAN ANTONIO

CONTRACTOR

Yonnie M. Blanchette
Executive Director

By:

Date

Date

*Note: Payment cannot be processed without a tax ID number.

APPROVED AS TO FORM: _____
CITY ATTORNEY