

ORDINANCE 2018-09-20-0754

**AUTHORIZING THE NEGOTIATION AND EXECUTION OF THE SECOND AMENDED AND RESTATED CONTRACT FOR IMPROVEMENTS AND/OR SERVICES IN THE SAN ANTONIO PUBLIC IMPROVEMENT DISTRICT WITH CENTRO PUBLIC IMPROVEMENT DISTRICT TO PROVIDE SPECIFIED SERVICES AND DEVELOP ANNUAL SERVICE AND ASSESSMENT PLANS FOR THE DOWNTOWN PUBLIC IMPROVEMENT DISTRICT FOR THE PERIOD ENDING SEPTEMBER 30, 2023.**

\* \* \* \* \*

**WHEREAS**, pursuant to Ordinance Number 2013-05-30-0380, passed and approved on May 30, 2013, the City Council approved the re-establishment of the Downtown Public Improvement District (“PID”) through September 30, 2023 pursuant to the Public Improvement District Assessment Act, Local Government Code, Chapter 372; and

**WHEREAS**, the PID is a means through which property owners in the District can self-fund additional improvements and services to enhance the appearance and safety of the San Antonio downtown area; and

**WHEREAS**, the current Amended and Restated Contract for Improvements and/or Services in the San Antonio Public Improvement District with Centro Public Improvement District was authorized and approved by City Council on September 5, 2013, by the passage of Ordinance Number 2013-09-05-0613; and

**WHEREAS**, under the proposed Second Amended and Restated Contract for Improvements and/or Services in the San Antonio Public Improvement District (“Second Amended and Restated Contract”) with the Centro Public Improvement District (“Centro”), Centro will continue to supplement City services by providing maintenance, beautification and landscaping, hospitality ambassador services, outreach and security services, marketing and promotion of the District, community events and programs, economic development activities, including business recruitment and retention activities, project management, planning and research initiatives and capital projects and special project services; and

**WHEREAS**, additionally, Centro will develop annual service and assessment plans to be approved by City Council; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council of the City of San Antonio authorizes the City Manager or her designee to negotiate and execute the Second Amended and Restated Contract with Centro to provide specified services and to develop annual service and assessment plans for the Downtown Public Improvement District for the period ending September 30, 2023, with one-year renewal

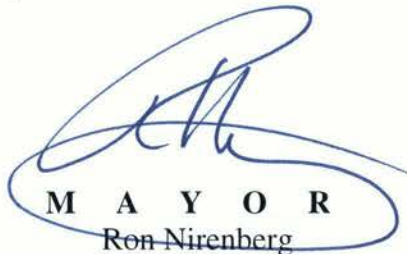
terms. A draft copy of the Second Amended and Restated Contract is attached to this Ordinance as **Attachment I**.

**SECTION 2.** Special assessment revenues are authorized to be paid to Centro, a Texas non-project entity, for services rendered to the PID. The payments to Centro are after payment to the City for associated administrative costs.

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

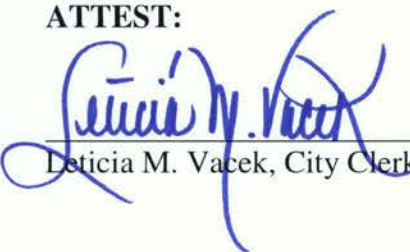
**SECTION 4.** This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

**PASSED AND APPROVED** this 20<sup>th</sup> day of September, 2018.



**M A Y O R**  
Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	27B ( in consent vote: 27A, 27B )						
<b>Date:</b>	09/20/2018						
<b>Time:</b>	10:31:05 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance authorizing the negotiation and execution of the Second Amended and Restated Contract for Improvements and/or Services in the San Antonio Public Improvement District with Centro Public Improvement District to provide specified services and develop Annual Service and Assessment Plans for the Downtown Public Improvement District for the period ending September 30, 2023.						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

LB  
09/20/18  
Item No. 27B

## **Attachment I**

**SECOND AMENDED AND RESTATED CONTRACT FOR  
IMPROVEMENTS  
AND/OR SERVICES IN THE  
SAN ANTONIO PUBLIC IMPROVEMENT DISTRICT  
IN THE DOWNTOWN AREA**

STATE OF TEXAS           §

COUNTY OF BEXAR       §

**WHEREAS**, pursuant to the Public Improvement District Assessment Act, V.T.C.A., Local Government Code, Chapter 372, as amended (the “Act”) the governing body of a municipality is authorized to undertake improvements and/or services which confer a special benefit on a definable part of the city; and

**WHEREAS**, the City Council of the City of San Antonio, Texas (“City”), is authorized by the Act to levy and collect special assessments on real property in a public improvement district, based on the special benefits conferred by the improvements and/or services and to pay the cost of such improvements and/or services; and

**WHEREAS**, on May 30, 2013, the City adopted Ordinance No. 2013-05-30-0380, authorizing the reestablishment of the Public Improvement District in the Downtown Area (“PID”) through September 30, 2023; and

**WHEREAS**, pursuant to Section 372.010 of the Act, an authorization takes effect when the ordinance authorizing the PID has been published one time in a newspaper of general circulation in the municipality; and

**WHEREAS**, the required public notices appeared in the Commercial Recorder on June 24, 2013; and

**WHEREAS**, as part of the City’s Downtown Strategic Plan, certain business and property owners desire to receive and underwrite the cost of supplemental services for the downtown area through the establishment of the PID; and

**WHEREAS**, such improvements and/or services constitute a supplement to standard City services and an added increment of service to ensure the continued high quality of maintenance in the PID and to provide other special benefits and services which will enhance the vitality and quality of the Downtown area; and

**WHEREAS**, Centro Public Improvement District (formerly the Centro San Antonio Management Corporation) (“Contractor”), a Texas non-profit corporation, has assisted the City by providing, furnishing or performing the aforesaid improvements and/or services in the PID since and would like to continue providing such assistance; and

**WHEREAS**, on September 5, 2014, the City Council of the City adopted Ordinance No. 2013-09-05-0613 which authorized the execution of the Amended and Restated Contract for Improvements and/or Services in the San Antonio Public Improvement District in the Downtown Area with the Contractor, as amended; and

**WHEREAS**, most recently on September 7, 2017, the City adopted Ordinance No. 2017-09-07-0639, which levied a Supplemental Special Assessment for Fiscal Year (FY) 2018 to fund services and improvements for the PID at a rate of \$0.15 per \$100 value of commercial real property and \$0.09 per \$100 valuation for condominium residential properties in the PID and approved the FY 2018 Services and Assessment Plan for the PID that included an Annual Budget, a Five-Year Fiscal Forecast, the Supplemental Special Assessment rate, a maintenance and landscaping program, a marketing program, a public services representatives program, a business recruitment and retention program, and a capital improvement program; and

**WHEREAS**, the City and the Contractor mutually desire to amend their current Agreement and enter into this Second Amended and Restated Contract for Improvements and/or Services in the San Antonio Public Improvement District in the Downtown Area;

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:**

That, for and in consideration of the mutual covenants, promises and agreements contained in this Agreement, the City, acting by and through the City Manager, and Centro Public Improvement District, a Texas non-profit corporation (the "Contractor"), acting by and through its duly authorized Executive Director, do covenant and agree as follows:

**SECTION 1.**

**Engagement of Contractor**

The City engages the Contractor, and the Contractor agrees to provide, furnish or perform the improvements and/or services to be provided in the PID as described in Section 2 of this Agreement.

**SECTION 2.**

**Scope of Services Provided by Contractor**

1. The Contractor shall annually submit to the City of San Antonio an updated *Service and Assessment Plan* (a "Plan") to outline the improvements and/or services to be provided, furnished and/or performed by the Contractor in the PID for the ensuing fiscal year. Fiscal years will end September 30, and Plans for the ensuing fiscal year shall be submitted by August 1st of each fiscal year. Once an updated Plan is provided to the City of San Antonio by the Contractor and a mutually accepted plan is approved by City Council by passage of an ordinance, the Contractor shall provide, furnish and/or perform all improvements and/or services called for in the Plan for the

ensuing fiscal year. Plans will be placed on file in the City Clerk's Office, and shall be attached to this Agreement as Exhibit A and incorporated upon completion and approval by City Council. Each Plan shall address the degree of services to be provided by the Contractor in each of the following programs, which are divided into Core and Non-core Services categories as indicated:

**Core Services:**

**Core Clean & Safe Including Landscaping Program:**

A. Maintenance and Landscaping Program

1. To the extent provided in the approved Plan, the Contractor shall provide the following maintenance services in the PID, either directly or through a subcontractor:
  - a. Sidewalk sweeping, litter removal and sidewalk washing as required to maintain an attractive pedestrian environment within the PID, coordinated with and supplementing the City's maintenance services;
  - b. In addition to and in coordination with the City's regular tipping of trash receptacles located on public property and in public rights-of-way within the PID, tip trash receptacles as required to maintain adequate remaining capacity; and
  - c. Clean street furniture and remove graffiti and other defacements from public areas in the PID (including benches, drinking fountains, fountains, public art, street planters and other public landscaping improvements, trash receptacles, pedestrian lighting, PID signage, public telephones and telephone booths, kiosks, and other related improvements in public areas) as provided in the Plan and coordinated with the City's cleaning and graffiti removal schedules.
  - d. At all times maintain vehicles, including if applicable those referenced in Exhibit C, which is more clearly described in Sections 3D and 9 of this Agreement, and all other equipment and service facilities used in the performance of this Agreement in a first-class operable state of repair including mechanical and safety inspections. Vehicles shall not be operated unless they are in such condition, and are free from defect or damage to interior, exterior, equipment, mechanisms or structure. The Contractor shall maintain all necessary motor vehicles, materials and other items, including spare parts, requisite to the continued and consistent performance of this Agreement in accordance with its obligations and in the manner contemplated by this Agreement.
2. To the extent provided in the approved Plan, the Contractor shall provide the following landscaping services in the PID, either directly or through a subcontractor:

- a. Care for and maintain all landscaping (including planters) funded, added, and/or installed by the Contractor, its agents, servants, employees or subcontractors within the PID, including: watering, fertilizing, pruning, plant replacement, treatment of wounds, disease control, and insect control.
  - b. The Contractor shall not be responsible for the maintenance and repair of plumbing and electrical equipment except for electrical equipment pertaining to tree lighting or other decorative PID improvements.
  - c. The Contractor shall report all plumbing problems to the designated City representative who shall report the same to the appropriate City department for timely correction.
  - d. The Contractor shall reimburse the City or pay directly for any repairs resulting from negligence or abuse of City electrical or plumbing facilities by the Contractor, its agents, servants, employees or subcontractors.
  - e. The Contractor shall advise the designated City representative in a timely manner of recognized needs for capital improvements, replacements, repairs and/or relocations of City-owned property in the PID (including street furniture and landscaping).
3. The Contractor shall provide 2 sidewalk power washing crews in addition to such services included in the Plan. The crews shall operate Sunday-Thursday from 9 p.m.-5:30 a.m. The invoices for such additional power washing services shall be separate from those for services furnished under the Plan, shall not be paid with PID funds and are subject to annual budgetary appropriation by City Council.

B. Public Service Representatives Program

To the extent provided in the approved Plan, the Contractor shall provide for a Public Service Representatives Program in the PID in the following ways:

1. Uniformed individuals, trained and knowledgeable about businesses and services located in and surrounding the PID, equipped with communication devices and circulating throughout the PID; and
2. The public service representatives shall work in close coordination with various public and private law enforcement individuals and agencies within the PID, but they shall not be or function as deputized law enforcement officers.



## **Marketing, Planning & Management Program:**

### **C. Management Program**

To the extent provided in the approved Plan, the Contractor shall provide the following administrative and management services for operations of the PID:

1. Recruit, hire, pay and provide the staff, administrative services, management, supervisory services and work force necessary to furnish improvements and/or services in the PID.
  - a. Contractor will ensure background checks are performed prior to an offer of employment for any potential employee to be compensated from PID funds.
2. Full-time employees shall be entitled to fringe benefits which shall include at a minimum a health plan for the employee and his/her dependents.
3. The Contractor shall keep payroll journals which accurately reflect the time worked by each employee for each pay period. The Contractor shall provide such journals as supporting documentation for reimbursed costs; and retain records of the payroll journals for a rolling period of four (4) years.
4. Provide the office space necessary to furnish services in the PID.
5. Provide financial and program monitoring systems for operation of the PID including:
  - a. Accurate, current and complete disclosure of financial results in accordance with the reporting requirements set forth in Section 26 of this Agreement;
  - b. Records that adequately identify the source and application of funds for PID activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated 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 assure that they are used solely for authorized purposes);
  - d. Comparison of actual expenditures for the current period and cumulative to date against budgeted amounts from the approved financial plan's Core or Non-core Services budgets;

- e. Procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor to include separate invoicing of salaries and recurring fixed monthly charges such as leases from the non-recurring monthly activity charges;
  - f. Establishment and maintenance of an adequate system of accounting and internal controls, ensuring that an adequate system exists for each of its sub-contractors. An acceptable and adequate accounting system presents and classifies costs of operating PID in such a manner as to facilitate adequate budgetary and financial evaluation. The Contractor shall be responsible for an accounting system reflecting generally accepted accounting principles.
  - g. The accounting system of the Contractor must ensure that City assessed PID funds and related expenditures be accounted for separately and not commingled with funds from other funding sources.
  - h. Procedures for determining the reasonable and allowable costs in accordance with the provisions of this Agreement and any and all applicable cost principles under generally accepted principles of accounting for non-profit corporations; and
  - i. Accounting records that are supported by source documentation;
6. Unless otherwise requested by the City, the Contractor shall coordinate with and provide quarterly reports to the City through its designated representative on operations, services provided, activities and conditions within the PID;
  7. Provide the City through its designated representative an annual independently audited financial report complete with an auditor's opinion, letter on internal control ("management letter"), and corrective action plans, if applicable, by December 31 for the preceding fiscal year;
  8. The Contractor shall enter into all necessary contracts with subcontractors and supervise and monitor their performance.
  9. Serve as an information resource for businesses, services, activities and physical improvements within the PID; and
  10. Provide recommended and updated annual Plans to the City's designated representative who will submit to the City Manager's Office plans which shall include detailed descriptions of the levels of services and/or improvements to be provided by the Contractor during the coming fiscal year for each of the programs listed in the Contractor's Scope of Services

(Section 2 of this Agreement). A financial plan/program budget shall also be included in each Plan.

11. Financial plans/program budgets will show expenditures in balance with income. The financial plan/program budget must be for the full fiscal year and reflect anticipated program activity throughout the life of this Agreement. If the Contractor operates for only a portion of the year, the financial plan/program budget must reflect the period of inactivity.
12. The Contractor must notify the City of any and all changes in board membership, officers, and policy in the next Plan. The Contractor must provide the City representative an accurate schedule as to time and place of regularly scheduled board meetings. Excepting consultation concerning attorney-client matters (real estate, litigation, contracts, personnel and security), all board meetings in which the board is acting as an advisory body as provided for in Section 372.008 of the Act shall be open to the public. In such cases, the City must be notified of the board meetings at least 72 hours in advance of said meeting. Minutes of these board meetings will become part of the Contractor's program record, and as such, must be kept current and are subject to review by the designated City representative.

D. Marketing Program

To the extent provided in the approved Plan, the Contractor shall provide a marketing program that shall include the following services:

1. A public relations/public service campaign to describe the PID; the services being provided; and activities, attractions, and events occurring within and surrounding the PID;
2. Seek a wide variety of media exposure for the PID and surrounding areas; and
3. Serve as a communication resource for information about the PID.

E. Business Recruitment and Retention Program

To the extent provided in the approved Plan, the Contractor shall collaborate with and support the efforts of the Economic Development Foundation, the City's Economic Development Department, and the San Antonio Chamber of Commerce in their efforts to attract and retain businesses in the PID.

**Non-core Services:**

F. Capital Projects Program

To the extent provided in the approved Plan, the Contractor shall provide for a

Capital Projects Program in the PID in the following ways:

1. Provide funding or partial funding for capital projects with the District including but not limited to: addition of furniture, signage, lighting, painting, façade improvements and other improvements within or adjacent to the public right-of-way within the District;
2. Provide funding for the hire of an individual or consultant services to administer implementation of the program.
3. Capital projects will solely be for outlays that are permanent fixtures; or assets with multi-year life.

## 2. Program Budget Adjustments

The Contractor shall have the authority to transfer budgets within activities/programs in a particular Core Service without approval. Budget adjustments between Core Service categories (“Core Clean and Safe, including Landscaping” and “Marketing, Planning, Contingency & Management”) or Non-core Service categories (“Capital Projects”, “Special Projects”, and “Program Reserves”) require the prior written approval of the City Manager or designee and will not be allowed if they reduce the budgets of the Core Clean and Safe, including Landscaping services category in excess of 10%. The total expenditure of funds by the Contractor to conduct PID activities must not exceed the total amount authorized by the City in the approved Plan. The Contractor shall immediately request approval from the designated City representative when there is reason to believe that a revision to the financial plan/program budget will be necessary for the following reasons:

- a. Changes are requested in the scope or the objective of projects, programs, services and/or improvements to be made according to the approved Service and Assessment Plan.

To obtain City approval, the Contractor must submit a written request stating the proposed changes and justification to the designated City representative. The City may, at its option, restrict revisions to the financial plan/program budget, and under no circumstances will revisions to the plan/budget be allowed if such revision, or any part thereof, causes PID funds to be used for purposes other than those intended by this Agreement and City Ordinance No. 2013-09-05-0613.

## 3. Other Service and/or Improvement Programs

To the extent provided in the approved Plan, the Contractor shall provide additional services and/or programs other than those described above. In addition to Section 2(2), the Contractor may appropriate an amount not to exceed \$25,000 annually as a Program Reserve. Unspent appropriations of the Program Reserve up to \$100,000 are allowed to be carried forward and used in the next fiscal year. These funds shall be used within the PID, at the Contractor’s discretion with the approval of the designated City representative for services and/or improvements under either the Core or Non-

core Services, save for employee salaries or related fringe. Expenditures for approved services and/or improvements will be reimbursed to the PID within the requirements of Section 6.

A. Execution of Services and/or Improvements by Contractor

The Contractor shall commence, carry on and provide such improvements and/or services with all practicable dispatch, in a sound, economical and efficient manner, in accordance with this Agreement and its attachments and all applicable laws. In providing such improvements and/or services, the Contractor shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being performed by the City or other agencies which may use the public right of way.

Personnel employed by the Contractor or its subcontractors shall not be considered employees of or under any contractual relationship with the City. Unless otherwise specifically provided herein, all of the improvements and/or services required herein will be performed by the Contractor or its subcontractors, and all personnel engaged by the Contractor shall be fully qualified to perform such improvements and/or services.

**SECTION 3.**

**The City's Duties and Responsibilities**

1. The City shall provide the following services in connection with operations of the PID and with the performance of this Agreement:
  - A. Annually determine the Supplemental Special Assessment for each Fiscal Year (FY), levy the assessment rate based on the value of real property in the PID; approve the Services and Assessment Plan for the PID, collect the assessments and record the same in a separate fund;
  - B. The City may use a third party to annually determine and collect the Supplemental Special Assessment for each fiscal year if it becomes more economically feasible to do so;
  - C. Make payments to the Contractor from assessment revenues, limited to funds currently available from assessment collections;
  - D. Maintain the existing level of services that the City currently provides in the PID (as set out in the Existing Downtown Maintenance, Horticultural and Landscaping document as of September 30, 2013 – Exhibit B), either directly or by payment(s) in lieu thereof (however, service reductions are permitted without penalty in conjunction with Citywide service reductions);
  - E. Maintain complete and detailed records concerning any expenditure of special assessment revenues that are made through City departments, boards or

agencies;

- F. Promulgate rules and regulations pertaining to the use of the public space in the PID;
  - G. Make quarterly reports to the Contractor concerning assessment collections, delinquent assessments, liens and make billings thereon as necessary;
  - H. Produce an annual assessment roll of property owners and property within the PID;
  - I. Respond to inquiries and requests from the Contractor in a timely fashion; and
  - J. Pay the annual assessments on municipal property in the PID satisfied through an annual net City contribution and an annual net City Public Service contribution that is determined by the rate levied by the City Council for each fiscal year, beginning in Fiscal Year 2014 and ending upon termination of this Agreement. The City determines its contribution based on the insured value of City property and increases at a rate of 2% a year. For FY 2014, the City contribution shall be \$247,218.00, and the City Public Service contribution shall be \$15,352.00.
2. The City shall have no financial obligation to the PID other than levying and collecting the assessments levied by the PID, except as provided in Section 3(1) above and paying for improvements and/or services that the Contractor performs in the PID in accordance with the approved Plan, subject, however, to the provisions of Sections 6 and 7 hereof. Payments shall be limited to funds available from assessment collections and contributions in payment of assessments against tax-exempt municipal property.
  3. In the event a PID fund balance remains after dissolution, after payment of all expenses, and after payment of all liabilities, City shall consult with the District to determine how to utilize any such balance for incremental services and/or improvements eligible under the Act within the boundaries of this PID.
  4. In the event City-owned equipment or vehicles are to be used by the Contractor, the City will allow the Contractor to utilize those certain City-owned vehicles and/or that certain City-owned equipment covered by Section 9 "Right of Ownership" that are to be identified by the Contractor with specificity in Exhibit C to this Agreement, within the limits of the District for delivery of the Contractor services as provided for in this Agreement. Exhibit C shall be supplemented from time to time during the term of this Agreement by written Supplement initialed on behalf of the Parties and submitted to the Office of the City Clerk by City staff for attachment to this Agreement, to reflect each addition and/or deletion of City owned vehicles and/or equipment.
  5. If Exhibit C is submitted by the Contractor, the City, by its officers, employees, agents, representatives and contractors, shall have the right at any and all reasonable times to inspect the vehicles, equipment and service facilities used by the Contractor

pursuant to this Agreement to verify performance by the Contractor of its obligations under this Agreement. Should the Contractor be found to have neglected and/or failed to properly maintain said vehicles, equipment and service facilities, the City may demand that the Contractor follow through with repair and maintenance obligations. If the Contractor refuses or neglects to commence within ten (10) business days after the City's demand and complete the same within thirty (30) business days after the City's demand, except for emergencies, then the City may, but is not obligated to, make and cause such repairs or maintenance to be made after, which the Contractor agrees that it will forthwith, on demand, pay to the City the costs thereof and if the Contractor defaults on such payment, the City shall be able to deduct said costs from funds transferred in the next fiscal year.

#### **SECTION 4.**

##### **Amendments to Contract**

This Agreement shall not be considered to be modified, altered, changed or amended in any respect unless the same is done in writing and is signed by both parties and approved by City Council as authorized by passage of an ordinance.

#### **SECTION 5.**

##### **Term**

The term of this Agreement shall begin on October 1, 2018. This Agreement shall terminate September 30, 2023 and may be extended for additional one-year terms beyond the initial term upon mutual agreement of both parties. Any extensions shall be authorized by the San Antonio City Council, evidenced by a duly authorized ordinance, on an annual basis. In the event the Downtown PID is terminated prior to the end of this Agreement, this Agreement shall automatically terminate without any action by either party. The compensation for contract extensions may be adjusted in accordance with the annual Service and Assessment Plan approved by City Council.

#### **SECTION 6.**

##### **Payments to Contractor**

1. After October 1, 2018 the City shall make payment on a reimbursement basis to the Contractor for performance of the work as hereinafter provided. The Contractor will invoice the City within 25 days of the end of each month.

Upon submission of invoices, the City shall review the invoices for accuracy and the required supporting documentation, to include but not limited to payroll journals; invoices for related fringe; contracts; lease agreements; meal receipts; and invoices from third parties. The City will remit payment via ACH within ten (10) working days for payroll related invoices and fifteen (15) working days for non-payroll related invoices from the date of complete invoice submission.

All invoice reimbursement packages will require the Contractor to certify that copies of invoices and other supporting documentation provided are the true and accurate representation of the original expenditure incurred by the Contractor. The City may also require the submission of cancelled checks and invoices to verify invoiced expenses paid. Should any expense or charge that has been approved by the City and processed for payment be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will refund such amount to the City. The City has the authority to deduct such claims from subsequent reimbursements.

Expenditures for late fees, "re-activation fees," and alcoholic beverages, and lobbying are not eligible expenses; and as such will not be processed by the City for reimbursement, regardless of activity or program. Where applicable, the Contractor should also mitigate the amount of sales tax incurred on PID related activities by working with the vendor to complete a tax-exemption.

The allocation of any expenditure between PID and Non-PID funding sources should be supported by a documented allocation. The documentation for the basis of the allocation shall be provided to the City for each allocated expense at the beginning of each fiscal year or at time of change.

A rolling one month operating advance may be issued upon the written approval of the Chief Financial Officer or designee.

2. The Contractor shall make a quarterly work report to the designated City representative. This quarterly report shall detail all of the Contractor's significant work activities during the preceding quarter. The format of the report shall be in a form that is mutually agreed upon by the Contractor and the City Manager. The report shall be due on the thirtieth (30) working day of the month after the end of the quarter. Payments to the Contractor may be withheld if the quarterly report is not received. The City's designated representative shall have the right to verify that the report is complete and accurate.
3. Upon conclusion of each fiscal year, the City and the Contractor shall reconcile the reimbursements made, receipts requested and any outstanding advance between the two entities. No further reimbursements will be made for the prior fiscal year after December 31<sup>st</sup> unless agreed to in advance by written agreement.
4. All funds received by the Contractor under this Agreement will be used in the management and operation of the PID. Any funds received from the City by the Contractor, even if held after the term of this Agreement, shall be used by the Contractor to manage the PID, or make improvements in or provide services in the PID, in accordance with the approved Plan. Acceptance by the City of requests for reimbursements that are not in compliance with Agreement provisions shall not be construed to be a waiver of the City's right to demand that future requests meet Agreement requirements.
5. The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation to include business purpose of expenses



is present.

- A. Employees, to be eligible for car allowance, are required to possess a valid Texas Driver's License and liability insurance as required by law. Participation by the employees in an approved defensive driving course is strongly encouraged. Evidence of the required driver's license and liability insurance must be kept on file with the agency.
  - B. Costs associated with out-of-town travel must be no more liberal than the City of San Antonio's travel policies. The purpose of the trip along with complete documentation of expenses and copies of all receipts are required to be maintained in the Contractor's files and provided to the City in the reimbursement package. Receipts for meals are to include all participants in attendance and business purpose for expense.
6. In those cases where the Contractor receives funds for this specific program from sources other than the City, there may be administrative-standards and/or practices that are different from those required by the City. The accounting system of the Contractor must ensure that City assessed PID funds and related expenditures be accounting for separately and are not commingled with funds from other funding sources.

## **SECTION 7.**

### **Availability of Funds**

If the City revenues referred to in Section 6 above are not available or are insufficient for the City to make the payments due hereunder, the City's designated representative will immediately notify the Contractor of such occurrence, and the Contractor's duty's under this Agreement shall be suspended until funds are available from special assessments or previously appropriated City funds. In the alternative when sufficient funds are not available, the City and the Contractor may meet and negotiate an amendment to this Agreement and the Plan so that the scope of improvements and/or services to be provided by the Contractor will correspond to the amount of available funds.

## **SECTION 8.**

### **Public Convenience and Safety**

1. The Contractor shall observe City ordinances relating to obstructing streets, keeping alleys or other rights-of-way open and protecting same and shall obey all laws and City ordinances controlling or limiting those engaged in the work and shall coordinate with the respective City departments concerning the same.
2. The Contractor shall perform its duties in a manner that will cause the least inconvenience and annoyance to the general public and property owners.

## SECTION 9.

### **Right of Ownership**

All permanent public facilities and equipment owned by the City within and/or for the benefit of the PID including but not limited to vehicles shall remain the property of the City, therefore, Contractor cannot dispose of such property without the express written consent of the City. Upon termination of the Contractor's services under this Agreement (including if the Contractor's services are not renewed), the City reserves the right to have full and complete legal and equitable ownership of any, some, or all improvements, facilities, and equipment funded (including funds provided through the City), added, and/or installed by the Contractor, its agents, servants, employees or subcontractors within the boundaries of and in connection with the PID (including benches, drinking fountains, fountains, public art, street planters and other landscaping improvements, pedestrian lighting, PID signage and banners, public telephones and telephone booths, kiosks, and/or other related improvements in public areas, and/or vehicles and other items of personal property) transferred to the City by the Contractor at no cost to the City. Additionally, upon termination of the Contractor's services the Contractor shall, as an expense of the PID, remove any such improvements on public property funded, added, and/or installed by the Contractor, its agents, servants, employees or subcontractors within the boundaries of and in connection with the PID that the City chooses not to retain.

## SECTION 10.

### **Discrimination by Contractor**

Non-Discrimination. As a party to this Agreement, the Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City 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 in this Agreement.

## SECTION 11.

### **Contractor Liability**

The Contractor shall assume full liability for any damages to any person or any public or private property that is due to the negligence of the Contractor, its subcontractors, agents, permittees or assigns.

## SECTION 12.

### **Personal Liability of Public Officials**

No employee of the City, or any other agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement or operations of the

Contractor under the terms of this Agreement.

### SECTION 13.

#### City Not Liable for Delay

It is further expressly agreed that in no event shall either party to this Agreement be liable or responsible to the other or any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings, or from or by or on account of any delay for any cause over which such party has no control.

### SECTION 14.

#### Indemnification

**THE CONTRACTOR covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF THE CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS ELECTED OFFICIALS, OFFICERS OR EMPLOYEES. IN THE EVENT THE CONTRACTOR AND THE 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.**

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

Defense Counsel – The City shall have the right to select or to approve defense counsel to

be retained by the Contractor in fulfilling its obligation hereunder to defend and indemnify the City, unless such right is expressly waived by the City in writing. The Contractor shall retain City-approved defense counsel within seven (7) business days of the City's written notice that the City is invoking its right to indemnification under this Agreement. If the Contractor fails to retain counsel within such time period, the City shall have the right to retain defense counsel on its own behalf, and the Contractor shall be liable for all costs incurred by the City. The 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.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of the 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 the Contractor or any subcontractor under worker's compensation or other employee benefit acts.

## **SECTION 15.**

### **Insurance**

Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Center City Development and Operations Department, which shall be clearly labeled "CONTRACT FOR IMPROVEMENTS AND/OR SERVICES IN THE SAN ANTONIO PUBLIC IMPROVEMENT DISTRICT IN THE DOWNTOWN AREA" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development and Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this section during the effective period of the Agreement and any extension or renewal hereof. When deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, the City shall consult with the Contractor to develop mutually agreed upon coverages and limits.

A contractor's financial integrity is of interest to the City; therefore, subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration

of this Agreement, and any extension hereof, at the Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. First Party Crime Coverage, to include Third Party Crime Coverage Endorsement a. Blanket Crime Coverage	\$5,000,000 Per Claim on First Party Coverage \$5,000,000 Per Claim on Third Party Coverage

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

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

The 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 an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to the City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend the Contractor’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.

In addition to any other remedies the City may have upon the 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 the Contractor to stop work, and/or withhold any payment(s) which become due, to the Contractor until the Contractor demonstrates compliance with these requirements.

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

It is agreed that the 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 Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

The Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

## **SECTION 16.**

### **Laws to be Observed**

The Contractor at all times shall observe and comply with all federal and state laws, local laws, ordinances, orders and regulations of the federal, state, county or City governments. The federal, state and local laws, ordinances and regulations which affect those engaged or employed in the work or equipment used in the work, or which in any way affects the

conduct of the work, shall be observed, and no pleas of misunderstanding will be considered on account of ignorance thereof.

1. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as 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. A City officer or employee;
  - B. His parent, child or spouse;
  - C. A business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
  - D. A business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
2. The Contractor warrants and certifies as follows:
  - A. The Contractor and its officers, employees and agents are neither officers nor employees of the City.
  - B. The Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.
3. The Contractor acknowledges that the City's reliance on the above warranties and certifications is reasonable.

## **SECTION 17.**

### **Taxes**

The Contractor shall pay all federal, state and local taxes that may be chargeable against the performance of this work, except where appropriate sales tax exemptions apply. Documentation for such exemptions is required to be maintained on file.

## **SECTION 18.**

### **Permits**

Before proceeding with the work under this Agreement, the Contractor shall obtain and pay for any necessary permits and licenses, whether issued by the state, county or the City and furnish proof thereof.

## **SECTION 19.**

### **Character of Workers and Work**

The Contractor and the Contractor's employees, including subcontractors, shall be competent and careful workers skilled in their respective trades. The Contractor shall not knowingly employ nor contract with any person who repeatedly engages in misconduct or is incompetent or negligent in the due and proper performance of his or her duties. The City shall have the right to require the Contractor to remove any employee who (as determined by a court) displays misconduct toward the public or public property, or is in any way discourteous to the public.

## **SECTION 20.**

### **Bidding**

The Contractor agrees to abide by the following bidding procedures as set forth below:

No bids or City approvals are required for equipment purchases and leases totaling less than \$3,000.00 annually. Three informal bids (if available) and no City approval will be required for equipment purchases and leases totaling \$3,000.00 - \$50,000.00 annually. Three formal bids (if available) and City approval are required for equipment purchases and leases totaling more than \$50,000.00 annually.

No proposals or City approval is required for professional services totaling less than \$3,000.00 annually. Three informal proposals (if available) and no City approvals will be required for professional services totaling \$3,000.00 - \$50,000.00 annually. Three formal proposals (if available) and City approval is required for professional services totaling more than \$50,000 annually.

## **SECTION 21.**

### **Equipment**

The Contractor shall at all times maintain its equipment in a clean, serviceable condition. All equipment shall be properly licensed and inspected and clearly marked with the Contractor's name.

The City retains ownership of all equipment/property purchased with funds received through the City and shall, at the City's option, revert to the City at termination. Should the City decline the option of reversion, then such equipment and/or property shall be sold by the Contractor and such PID funds shall be used in accordance with Section 3(C) of this Agreement. It is understood that the term "equipment", shall include not only furniture and other non-expendable, durable property, but also vehicles.

1. No equipment, purchased with funds from assessments with a Fair Market Value in excess of \$2,500 may be disposed of without prior written approval from the



City. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace such equipment to the extent such equipment is covered by insurance. City funds cannot be used to replace equipment in those instances.

2. 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.
3. 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/PID 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 City, including:
  - A. A reasonably complete description of the missing, damaged or destroyed article 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.

## **SECTION 22.**

### **Assigning or Subletting this Contract**

The Contractor shall not assign this contract or any portion of this contract without written approval of the City Manager's Office. The City's written approval of the Contractor assigning this Contract shall not be considered as making the City a party to such assignment or subjecting the City to liability of any kind to any contractor. No subcontract shall under any circumstance relieve the Contractor of the Contractor's liability and obligations under this contract; all transactions will be made through the Contractor. Such subcontractors will be recognized and dealt with only as workers and representatives who are providing services to the Contractor. Any subcontractors shall be subject to the provisions of Section 11.

## **SECTION 23.**

### **Breach of Contract**

All terms, conditions and specifications of this Agreement shall be considered material, and failure to perform any part of the Agreement shall be considered a breach of contract.

Should a party in default fail to remedy any breach of contract within fourteen days after written notification to the other party of the violation, the non defaulting party may, at its option and in addition to any other remedies available to it under law, terminate the Agreement. This Agreement shall not be terminated, however, if the defaulting party has commenced to cure the breach within said fourteen day period, and thereafter pursues such cure with reasonable diligence and in good faith.

## **SECTION 24.**

### **Contract Administration**

The City assigns to the Contractor the responsibility to perform the administrative, supervisory and management tasks for the PID as set forth in this contract and the Plan which is on file in the City Clerk's Office of the City of San Antonio. Administration by the City of this Agreement involves many departments. Tasks have been assigned to the organizational units within the City structure that are best equipped to administer specific tasks and eliminate duplication of effort. The City Manager's Office will provide the Contractor written notice of representative(s) designation. Should any question arise with regard to the responsible department, such inquiry should be made to the Center City Development & Operations Department. The various tasks are assigned as follows:

- A. BUDGETING – CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT; OFFICE OF BUDGET AND MANAGEMENT AND CITY MANAGER'S DESIGNEE;
- B. CONTRACT NEGOTIATION AND EXECUTION – CITY MANAGER'S DESIGNEE;
- C. PROGRAM MONITORING - CITY MANAGER'S DESIGNEE;
- D. FISCAL MONITORING - CITY MANAGER'S DESIGNEE;
- E. ACCOUNTING AND ASSESSMENT STATEMENTS - FINANCE DEPARTMENT;
- F. AUDIT - CITY AUDITOR'S OFFICE;
- G. EQUAL EMPLOYMENT OPPORTUNITY - HUMAN RESOURCES;
- H. REPROGRAMMING OF FUNDS BETWEEN AGENCIES – OFFICE OF BUDGET AND MANAGEMENT AND CITY MANAGER'S DESIGNEE;
- I. PROGRAM AND FISCAL EVALUATION - CITY MANAGER'S DESIGNEE;
- J. PLANNING - CITY MANAGER'S DESIGNEE;

- K. AGENCY BOARD MONITORING - CITY MANAGER'S DESIGNEE;
- L. INSURANCE – OFFICE OF RISK MANAGEMENT;
- M. FILED DOCUMENTS – CITY CLERK'S OFFICE; AND
- N. ANY OTHER TASKS – CITY MANAGER'S DESIGNEE.

**SECTION 25.**

**Information**

The Contractor shall, at such time and in such form as the City may require, furnish periodic information concerning the status of the project and such other statements, certificates and approvals relative to the project as may be requested by the City through its designated representative.

**SECTION 26.**

**Books and Records**

The Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be maintained on a generally-accepted accounting basis and shall be clearly identified and readily accessible. The Contractor shall provide representatives of the City or its appointees free access to such books and records, at all proper times, in order that they may examine and audit the same and make copies thereof. The Contractor shall further allow the City and its representatives to make inspections of all work data, documents, proceedings and activities related to this Agreement. Such right of access and audit shall continue for a period of four (4) years from the date of final payment under this Agreement.

**A. Approval of Accounting System**

The Contractor shall establish and maintain a financial system which provides for adequate control of Agreement funds and other assets; ensure the accuracy of financial data; and provide for operational efficiency and for internal controls to avoid conflicts of interest and to prevent irregular transactions or activities.

The City's Auditor's Office may perform audits on the Contractor's system of internal accounting and administrative controls during the course of this Agreement.

**B. Reporting Requirements**

The Contractor must comply with any and all applicable Federal, State and/or Local reporting requirements.

### **C. Cash Management**

The Contractor must deposit PID funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where PID funds deposited exceed the FDIC insurance limit, the Contractor must arrange with its bank to automatically have the excess collaterally secured. The Contractor will maintain on file a written copy of the collateral agreement from its banking institution for monitoring reviews and audits.

### **D. Checks and Check Procedures**

The Contractor shall establish adequate internal accounting and administrative controls to properly safeguard the preparation of checks and unused checks. The system of internal accounting and administrative controls must include the following controls:

1. All checks issued in an amount greater than \$1,000.00 on PID funds must have the original signatures of two (2) duly authorized and responsible officials;
2. No blank checks are to be signed in advance;
3. No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$50.00 maximum;
4. Unclaimed salary or wage checks must be submitted to the State in compliance with Unclaimed Property laws.
5. The Contractor is required to include supporting documentation for any adjustments due to voided checks/invoices in the next reimbursement request.

### **E. Equipment Records**

Records shall be maintained on all non-expendable items obtained with PID funds and will include:

1. A description of the equipment, including the model and serial number, if applicable;
2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;
3. An indication of whether the equipment is new or used;
4. The vendor's name (or transferred from);
5. The location of the property;

6. The property number shown on the property tag; and,
7. A list of disposed items and disposition.

Non-expendable equipment must be properly identified as furniture or equipment and listed in the asset section of the GENERAL LEDGER cumulative from the date of purchase. An annual inventory of all equipment/property purchased or acquired under this Agreement is required to be completed and submitted by the Contractor as part of the annual financial plan/program budget. The City may perform an on-site verification of the inventory to determine the item's existence, condition, location and disposition instructions if applicable.

## **SECTION 27.**

### **Performance Audit**

The City shall have the right to conduct a performance audit and evaluation of Contractor at such times as the City deems necessary. The Contractor shall fully cooperate with any such performance audit. The City may employ consultants at the City's expense to assist the City in audits. The Contractor agrees to give the City and its consultants access to all reports, data, schedules, etc., which may be required to conduct said performance audit.

1. The City reserves the right to dispatch auditors of its choosing to any site where any phase of the programs is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office or other locals of the Contractor such as sites or the activities performed therein have any relation to the program covered by this Agreement.
2. When an audit or examination determines that the Contractor has expended funds which are questioned by the City, the Contractor shall be notified and given an opportunity to address the questioned costs.
3. The City shall exercise its right to collect the debt through one of the two methods listed below:
  - A. The City shall notify the Contractor of any disallowed expenses. The City may, at its option, demand repayment in cash from the Contractor of all disallowed costs from funds other than those given under this Agreement. Cash settlement will be the normal method of repayment to the City.
  - B. Should the Contractor continue to use assessment funds for ineligible expenses the City may, at its option, withhold any or all of its payments to the Contractor and draw back unexpended funds to collect the debt.
4. All expenses associated with the collection of delinquent debts will be the sole responsibility of the Contractor and shall not be paid from any program funds received by the Contractor under this Agreement.

5. The City shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Agreement.

## **SECTION 28.**

### **Notices**

Any notice, bill, invoice or report required by this contract shall be conclusively determined to have been delivered at the time same is deposited in the United States mail, in a sealed envelope with sufficient postage attached, to the appropriate addresses listed below:

City of San Antonio  
Center City Development and Operations Department  
PO Box 839966  
San Antonio, TX 78283-3966

Centro Public Improvement District  
ATTN: Executive Director  
110 Broadway, Suite 230  
San Antonio, TX 78205-1906

## **SECTION 29.**

### **Headings Disregarded**

The titles of the several sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in constructing or interpreting any of the provisions of this Agreement.

## **SECTION 30.**

### **Venue, Jurisdiction, and Legal Expenses**

Should any action, whether real or asserted, at law or in equity, arise out of the execution of this Agreement, venue for said action shall lie in Bexar County, Texas. This Agreement and any action in connection herewith shall be governed, constructed and enforced by the laws of the State of Texas.

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. During the term of this Agreement, if the Contractor files and/or pursues an adversarial proceeding against the City then, at the City's option, this Agreement and all access to the funding provided for may terminate if the Contractor is in violation of this paragraph.

The Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved. For purpose of this Article, "adversarial proceedings" include any cause of action filed by the Contractor in a state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

### **SECTION 31.**

#### **Severability**

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

### **SECTION 32.**

#### **Non-waiver**

The failure of any party to insist upon the performance of any term or provision of this Agreement or to exercise any right herein conferred shall not be constructed as a waiver or relinquishment to any extent of the party's rights to assert or rely upon any such term or rights on any future occasion.

### **SECTION 33.**

#### **Entirety of Agreement**

This written instrument and all attachments incorporated by reference constitute the entire agreement by the Parties concerning the work and services to be performed, and any prior or contemporaneous oral or written agreements which purport to vary from the terms of this Agreement shall be void.

### **SECTION 34.**

#### **Use of Right-of-way**

It is understood that the City, by execution of this Agreement, does not impair or relinquish the City's right to use its rights-of-way for public purposes, nor shall use of the land under this Agreement ever be construed as abandonment by the City of such land acquired for public purposes, and the City does not purport to grant any interest in the land described herein but merely consents to the use of City rights-of-way within the PID by the Contractor, its agents, servants, employees or subcontractors for the improvements and/or services to be provided, furnished or performed by the Contractor as set forth in the PID's approved annual *Service and Assessment Plan* and in accordance with this Agreement.

**SECTION 35.**

**Effective Date**

This Agreement is made and entered, and WITNESS the following signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CENTRO PUBLIC IMPROVEMENT DISTRICT,**  
a Texas Non-profit Corporation

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

\_\_\_\_\_  
Warren Wilkinson  
EXECUTIVE DIRECTOR

\_\_\_\_\_  
Sheryl Sculley  
CITY MANAGER

ATTEST:

ATTEST:

Name: \_\_\_\_\_

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Andrew Segovia  
CITY ATTORNEY



# Exhibit A

# **Exhibit B**

## **CITY OF SAN ANTONIO Existing Downtown Maintenance, Horticultural, and Landscaping Services**

The City shall continue to provide the area included in the Downtown Public Improvement District (PID) with a variety of municipal services. Services not supplemented by the PID will continue to be provided by the City, including: fire and police protection; emergency medical services; code compliance services; building inspection services; public health services; library services; economic development and planning services; traffic, streets, parking, and drainage services; street cleaning services; and convention and visitor services.

Described below are the street- and River Walk-level maintenance, horticultural, and landscaping services currently provided by the City which will continue to be provided by the City at these levels (subject to City Council approved budget adjustments) and which will be supplemented by the PID:

### **MAINTENANCE**

#### **1. Power washing and General Washing**

##### **a. Sidewalk Power washing and Cleaning**

- 5.1 miles of Downtown sidewalks are swept nightly.
- Bridge, flagstone, and concrete structures are power cleaned as needed.
- Nightly street sweeping of downtown business district.

##### **b. River Walk washing and cleaning**

- Stairwells are inspected daily and cleaned as needed.
- Frequency is heaviest in the River Bend and Extension areas to the North Channel, with the heavily traveled stairwells in the restaurant areas receiving the most attention.
- 3.5 miles of sidewalks pressure washed monthly

#### **2. Trash Removal**

##### **a. Street-level**

- Downtown public refuse receptacles are serviced twice daily, seven days a week.

**b. River Walk-level**

- A maintenance crew spends four hours each day cleaning debris from the water way in the River Bend and Extension to the North Channel.

**3. Special Event Services**

**a. Street-level**

- Crew cleans street-level after designated special events.
- These events include: New Years Eve celebration; Night in Old San Antonio; Battle of Flowers parade; Fiesta Flambeau parade; Fiesta River parade; Jazz Alive festival; Holiday River parade and tree lighting; Alamo Bowl; Luminaria, and other city-sponsored events.
- Crews install and remove Christmas lights in Alamo Plaza, Travis Park, Milam Park and Houston Street.

**b. River Walk-level**

- Crew (at full-staff level) cleans the River Walk in the River Bend and Extension to the North Channel following designated special events, as required.
- These events include New Years Eve celebration; Fiesta River parade; Holiday River parade.
- City installs and removes Christmas lights along River Walk.

**4. Graffiti Abatement**

**a. Street-level**

- The City's comprehensive Graffiti Abatement Program will continue to include the PID area.

**b. River Walk-level**

- A power washing crew immediately removes reported graffiti.

**HORTICULTURAL AND LANDSCAPING SERVICES**

Existing City plantings, planting areas, and turf are those controlled by the City as of September 30, 2013, and those subsequently installed by the City or City-contracted crews. These do not include privately controlled landscaping improvements, non-City controlled public landscaping, or PID funded plants and landscaping. These City horticultural and landscaping services may be supplemented by the PID.

The PID will be responsible for the maintenance and upkeep of its plantings, three- pot

clusters, lamp post plantings and handrail plantings. The City will remain responsible for the horticultural and landscaping services currently provided by the City for existing City plantings, planting areas, and turf at the following levels (subject to City Council approved budget adjustments):

### **1. Plantings and Replacements**

- Existing City perennial plantings and turf (trees, shrubs, herbaceous perennials, groundcover, and grasses) are replaced as needed (in event of death or planting area renovations).
- Annuals in existing City planting areas (pansies, marigolds, vinca, begonias, etc.) are replaced two or three times each year.

### **2. Watering**

- Amount and frequency of watering existing City plantings and turf depends on plant type, temperature, and rainfall.
- Turf is watered once weekly in hot months and biweekly in cooler months.
- Annual plantings are watered up to three times weekly during hot months and once weekly during cooler months.
- Xeriscape-type perennials are watered up to twice monthly.
- Nonxeriscape-type perennials are watered once weekly in hot months and biweekly in cooler months.

### **3. Mowing and Trimming**

- Mowing and trimming is performed weekly from April through September, twice monthly from October through December, once monthly in January and February and twice monthly in March. Timing is subject to change due to varying weather conditions.

### **4. Inspecting**

- Inspections of existing City plantings, planting areas, and turf occur up to twice weekly.

### **5. Weeding, Fertilizing, Pruning, and Treatment of Wounds**

- Performed on existing City plantings, planting areas, and turf as needed.
- Need determined by inspection.

# **Exhibit C**

## **Vehicle Inventory**

In the event Contractor conveys the title and ownership of any vehicles or equipment to the City of San Antonio, the information to be provided shall include current State License Numbers, Vehicle Identification Number, (VIN), the year, make, model and type of each vehicle, Asset ID number, and the date of its acquisition for each vehicle and/or equipment transferred to City, and used by Contractor pursuant to this Agreement.