PROFESSIONAL SERVICES AGREEMENT
FOR
COVID-19 INFORMATIONAL AWARENESS STRATEGIC MARKETING SERVICES

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City"), on behalf of the San Antonio Metropolitan Health District ("Metro Health"), acting by and through its City Manager or designee, pursuant to Ordinance No. 2021-02-XX-XXXX and Giant Noise: Public Relations, Social Media & Events ("Consultant"), both of which may be referred to herein collectively as the "Parties" And individually as a "Party."

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

I.
DEFINITIONS

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

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director or interim director of City's San Antonio Metropolitan Health District.

"Immunization and Vaccines for Children Grant" shall mean the U.S. Department of Health and Human Services' (DHHS) Centers for Disease Control and Prevention (CDC) Grant (CDC-RFA-I-19-1901) which provides funding for this Agreement.

"Public Health Emergency Preparedness Coronavirus 2019 (COVID-19) Grants" shall mean the DSHS grant contracts (Contract No. HHS000767600001) and (Contract No. HHS000764800001) which fund this agreement and are made in accordance with the Public Health Crisis Response Cooperative Agreement for Emergency Response from the Centers for Disease Control and Prevention (Funding Opportunity Number CDA-RFA-TP18-1802).

"Project or Program" shall mean the general scope of services of this Agreement as well as the overall objectives and goal of the City's Public Health Emergency Preparedness Coronavirus 2019 (COVID-19) Grants and the Immunization and Vaccines for Children Grant.

"System Agency" means the Health and Human Services Commission (HHSC) or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services (DSHS).

II.
TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on February 20, 2021 and terminate on June 30, 2021.

2.2. If funding for the entire Agreement is not appropriated at the time this Agreement is made, City retains the right to terminate this Agreement, subject to and contingent upon such appropriation.

2.3 Consultant further agrees and understands that the City expects to pay all obligations of this Agreement from grant funding. Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then upon written notice by City to Consultant of such lack of funding, this Agreement will terminate and neither City nor Consultant will have any further obligations hereunder. Lack of funding due to City's failure to receive adequate funding is not and will not be considered a breach of this Agreement.

III.
SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.1 GENERAL DESCRIPTION. Consultant agrees to provide the City professional marketing services to promote the City's COVID-19 Informational Awareness Strategic Marketing Campaign for the placement of strategic advertising during the second phase of the *What Will It Take* campaign, which will focus on vaccine information. Consultant shall implement media campaign(s), as approved by Director. Consultant understands and agrees that messaging and communications shall be consistent with state and local requirements, as may be amended from time to time. Consultant agrees to develop marketing strategies that reach each target audience recommended by the City. City will share media placement with Consultant to develop creative designs that use mutually agreed upon marketing placements to reach target audiences, based on the City's planned strategy of outreach and measurements of success.

3.2 PROJECT MANAGEMENT. Throughout the term of this Agreement Consultant agrees to be responsible for the oversight of all media marketing in support of the City's COVID-19 Informational Awareness Strategic Marketing Campaign ("Project" or "Campaign"). Consultant shall manage the Project's day-to-day operations. Consultant shall oversee the television, radio and social media production for this Project. Consultant shall coordinate with City departments and offices, including but not limited to the City's Government and Public Affairs, Parks, Library, Neighborhood and Housing Services, and Airport departments, as well as with the City Council and Mayor's offices to ensure community-wide distribution of Campaign media content and products. Consultant shall oversee the community mural program in support of this Project.

3.3 MUSIC PROGRAM. By March 14, 2021, Consultant shall select, engage, and consult with three (3) music artists that are new to the Campaign and as approved by the City. Consultant shall coordinate with said City approved music artists to create jingles for the Campaign. Consultant shall develop and provide all musicians participating in this Project with guidelines to create new songs with a strategic focus on the COVID-19 vaccine and on multigenerational family stories. Consultant shall manage the recording and mastering works. Consultant agrees to collaborate with MM Creative on video shoots. Consultant shall assist the City with media interviews.

3.4 INFLUENCER ENGAGEMENT. By March 14, 2021, Consultant shall engage with four to six (4-6) media influencers, as approved by the City. Consultant shall work with said media influencers to ensure that the media influencers support and distribute Campaign information and content, as approved by the City.

3.5 SOCIAL MEDIA AD BUYING. By March 14, 2021, Consultant shall create and buy social media advertisements that use culturally-relevant messaging to reach and influence the City's target audiences. Consultant shall ensure that these advertisements are published on Instagram and Facebook media platforms and are distributed on Instagram and Facebook from February 20, 2021 through March 15, 2021.

3.6 GRASSROOTS COORDINATION. Consultant agrees to coordinate grassroots efforts with community partners for flyer and e-blast vaccine message distribution, as approved by the City. Consultant shall be responsible for the distribution and delivery of Project flyers to all community locations by March 14, 2021. Consultant agrees to make calls to add to the City's community list Paletas in the Park Program.

3.7 COMMUNITY MURAL PROGRAM. Consultant agrees to be responsible for the creative development and completion of Project murals, as approved by Director. The murals shall be completed in key marginalized areas, including City Council Districts 2, 3, 4 and 5. One mural shall be completed in each of these Council Districts. One additional mural will be completed in one of these Council Districts as determined by Consultant and Metro Health.

3.7.1 By March 14, 2021, Consultant shall ensure the creative development and completion of three (3) Project murals.

3.7.2 By June 30, 2021, Consultant shall ensure the creative development and completion of two (2) additional community murals.

3.8 CREATIVE DIRECTION. Consultant understands and agrees to provide creative and strategic direction on all creative marketing decisions for this Project and shall attend all Project meetings. Consultant agrees to produce up to 300 creative files in both English and Spanish for the Campaign, including but not be limited to digital files for City assets, grassroots, print, and digital files for print advertisements, door hangers, banners, yard signs and all digital assets.

3.9 PROJECT REPORTS. Consultant agrees to submit to the City Project Reports in a form acceptable to the City, and as requested by City throughout the duration of this Agreement.

3.9.1 By March 15, 2021, Consultant shall submit to the City a Project report, containing Project status information, as required by City.

3.9.2 By June 30, 2021, Consultant shall submit to the City a Project report, containing Project status information, as required by City.

3.10 Consultant agrees to perform services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

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

IV.
COMPENSATION

4.1 In consideration of Consultant's satisfactory and efficient performance of all services and activities set forth in this Agreement, as determined by City, City agrees to pay Consultant a total amount not to exceed One Hundred Sixty Thousand, Forty Dollars and Zero Cents ($160,040.00) as follows:

4.1.1 For services described in Section 3.2 of this Agreement, Consultant shall invoice City $8,590 in March for services completed in February 2021 and $8,450 per month for completion of services for March through June 2021, for a total amount not to exceed $42,390.

4.1.2 For services described in Section 3.3 of this Agreement, Consultant shall invoice City by April 15, 2021 up to: $9,000 in recording artist fees ($3,000 per music artist); and up to $4,000 in agency fees, a total amount not to exceed $13,000.

4.1.3 For services described in Section 3.4 of this Agreement, Consultant shall invoice City by April 15, 2021 up to: $6,000 in influencer fees ($1,000-$2,000 per influencer); and $2,000 in agency fees, a total amount not to exceed $8,000.

4.1.4 For services described in Section 3.5 of this Agreement, Consultant shall invoice City up to: $5,000 per month for February and March 2021 social media ad buys; and $1,000 per month for February and March 2021 agency fees, a total amount not to exceed $12,000.

4.1.5 For services described in Section 3.6 of this Agreement, Consultant shall invoice City up to: $2,500 for paletas and magnets; $5,000 for flyers, posters, T-shirts, and printing; and $33,750 in agency fees, a total amount not to exceed $41,250.

4.1.6 For services described in Section 3.7 of this Agreement, Consultant shall invoice City up to: $16,000 for services through March 14, 2021; and $6,150 for services through June 30, 2021, a total amount not to exceed $22,150.

4.1.7 For services described in Section 3.8 of this Agreement, Consultant shall invoice City up to: $1,500 in March for services completed in February 2021; $4,250 in April for services completed in March 2021; and $5,166.67 per month for completion of services for April-June 2021, a total amount not to exceed $21,250.

4.2 No additional fee or expense of Consultant shall be charged by Consultant nor be payable by City. The Parties agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all Parties, evidenced in writing and approved by Director.

4.3 INVOICES. Consultant shall invoice City on a monthly basis, by the 15th of each month, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted via email to City's Accounts Payable inbox (Accounts.Payable@sanantonio.gov) with a copy to Stacy.Maines@sanantonio.gov or by mail at the following address: City of San Antonio, Attn: Accounts Payable, PO Box 839976, San Antonio, TX 78283-3976. If Consultant fails to submit an invoice, Consultant waives the right to be paid by City.

4.4 PAYMENT. Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Consultant following the Director's approval. City shall not be obligated or liable under this Agreement to any Party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V.
OWNERSHIP OF WORKS

5.1 Any and all writings, documents, information, native files, graphic designs, creative designs, custom hash tags, branding materials, quotes or comments posted by followers on social media channels or in e-mail responses, or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writings, documents, information, native files, graphic designs, creative designs, custom hash tags, branding materials shall be the subject of any copyright or proprietary claim by Consultant**.**

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents, information, native files, graphic designs, creative designs, custom hash tags, branding materials, quotes or comments posted by followers on social media channels or in e-mail responses and information, City has the right to use all such writings, documents, information, native files, graphic designs, creative designs, custom hash tags, and branding materials, as City desires, without restriction.

5.3 Any and all work product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by City, as provided by Title 17 of the United States Code. To the extent that work product does not qualify as a "work made for hire" under applicable federal law, Consultant hereby irrevocably assigns and transfers to City, its successors and assigns, the entire right, title, and interest in and to the work product, including any and all intellectual property rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the work product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Consultant agrees to execute all papers and to perform such other acts as City may deem necessary to secure for City or its designee the rights herein assigned.

5.4 In accordance with Texas law, Consultant 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, Consultant agrees that no such local government records produced by or on the behalf of Consultant pursuant to this Contract shall be the subject of any copyright or proprietary claim by Consultant. Consultant 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. Consultant further agrees to make such records available to City at any time and to turn over all such records to City upon termination of this Agreement. Consultant agrees that it shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without the written permission of the Director, unless required to do so by a court of competent jurisdiction. Consultant shall notify City of such request as set forth in Article VIII, of this Agreement.

VI.
REQUESTS FOR AND RETENTION OF RECORDS

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention

period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

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

6.3 Consultant shall notify the City**,** immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in this Agreement. Consultant understands and agrees that City will process and handle all such requests as requests submitted under the Texas Public Information Act, if applicable.

VII.
TERMINATION

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

7.2 Termination Without Cause**.** This Agreement may be terminated by City upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Any material breach of the terms of this Agreement as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have ten (10) business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in

whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law. Any one or more of the following events shall be deemed an "event of default" hereunder:

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
7.4.2 Bankruptcy or selling substantially all of Consultant's assets;
7.4.3 Failing to perform or failing to comply with any material covenant herein required;
7.4.4 Performing the services unsatisfactorily, as determined by the Director;
7.4.5 The failure to meet reporting requirements of grantor of funding as set out and determined by City; or
7.4.6 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

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

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

7.7 Within forty-five (45) calendar days of the earlier of the following: the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

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

7.10 City shall pay Consultant for conforming goods delivered and services provided prior to the date of termination, offset by any amounts due and owing from Consultant to City.

VIII.
NOTICE

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

If to City, to:

City of San Antonio
Attn: Director
San Antonio Metropolitan Health District
111 Soledad, Suite 1000
San Antonio, Texas 78205

If intended for Consultant, to:

Giant Noise: Public Relations, Social Media & Events
Attn: Rose Reyes, President
132 W. Grayson, Suite 104
San Antonio, TX 78215

IX.
SPECIAL PROVISIONS

9.1 Consultant acknowledges that funds for this Agreement are from federal funds provided to the City through the DSHS under the Public Health Emergency Preparedness Coronavirus 2019 (COVID-19) Grants (Contract No. HHS000767600001) and (Contract No. HHS000764800001). Consultant agrees to comply with and be subject to all applicable subcontractor provisions as outlined in the current Statement of Work, the HHSC Uniform Terms and Conditions and as applicable, the HHS Data Use Agreement (TACCHO Version) as well as applicable cost principles, audit requirements and administrative requirements incorporated herein

by reference. Consultant agrees to comply with all terms and conditions associated with said funds as directed by the City in order to enable City to comply with its obligations under the DSHS Contracts to include, but not limited to the following:

9.1.1 AGENCY'S RIGHT TO AUDIT. Consultant shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Consultant pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.

In addition to any right of access arising by operation of law, Consultant and any of Consultant's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.

If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Consultant shall produce original documents related to this Contract. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billing.

Consultant shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

9.1.2 STATE AUDITOR'S RIGHT TO AUDIT. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor

with access to any information the state auditor considers relevant to the investigation or audit. Consultant shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

9.1.3 CONFIDENTIALITY. Consultant shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Consultant under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Consultant.

X.
AUDIT

10.1 If the Consultant expends $750,000.00 or more of funds provided under this Agreement, or cumulative funds provided by or through City, then during the term of this Agreement, the Consultant shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) calendar days immediately succeeding the end of Consultant's fiscal year, expiration or early termination of this Agreement, whichever is earlier. Consultant understands and agrees to furnish Metro Health a copy of the audit report within a period not to exceed fifty (50) calendar days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to Metro Health by Consultant within fifty (50) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

10.2 The Consultant agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Consultant's Single Audit. Reimbursement shall be made within twenty (20) calendar days of written notification regarding the need for reimbursement.

10.3 The Consultant agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the Consultant or its programs of any findings about accounting deficiencies, or violations of Consultant's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Metro Health within a period of fourteen (14) calendar days upon the Consultant's receipt of the report.

10.4 If Consultant expends less than $750,000.00 of funds provided by or through the City, then during the term of this Agreement, the Contactor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of Consultant's fiscal year or 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 Consultant attesting to the correctness of said financial statement.

10.5 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

10.6 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, not to exceed two times per twelve (12) month period. 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, Consultant agrees to make available to City all accounting and Project records. Consultant acknowledges that this provision shall not limit the City from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the City's attention which are other than routine.

10.7 Consultant shall during normal business hours, and not to exceed two times per twelve month period 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 four (4) 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 Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the Consultant 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 Consultant 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.

10.8 The City may, in its sole and absolute discretion, require the Consultant 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 Consultant shall abide by such requirements.

10.9 When an audit or examination determines that the Consultant has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the Consultant shall be notified and provided an opportunity to address the questioned expenditure or costs.

10.10 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Consultant will immediately refund such amount to the City no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. At its sole option, Metro Health may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by

City of the exercise of such option, Consultant shall provide to City a full refund of such amount no later than thirty (30) calendar days from the date of notification of such disapproval or disallowance by the City. If Consultant 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 check, cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the Consultant is forbidden from reducing Project expenditures and Consultant must use its own funds to maintain the Project.

10.11 Consultant agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by Consultant shall be the sole responsibility of the Consultant and shall not be paid from any Project funds received by the Consultant under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of Metro Health.

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

XI.
ADMINISTRATION OF AGREEMENT AND RESTRICTIONS ON USE OF FUNDS

11.1 Consultant agrees it shall be subject to applicable requirements of the City's grant contracts for the Public Health Emergency Preparedness Coronavirus 2019 (COVID-19) Grants and the Immunization and Vaccines for Children Grant.

11.2 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 or the Director, as representatives of the City and the parties ultimately responsible for all matters of compliance with the City's Public Health Emergency Preparedness Coronavirus 2019 (COVID-19) Grants and the Immunization and Vaccines for Children Grant and City rules and regulations, shall have the final authority to render or secure an interpretation.

11.3 Consultant 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.

11.4 Unless otherwise stated herein, within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, Consultant shall submit all required deliverables to City. Consultant understands and agrees that in conjunction with the submission of the final report, the Consultant shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

11.5 Consultant shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local

Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, Consultant shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, Consultant agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

11.6 Consultant shall make available to City, the State, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to Consultant's facility and to Consultant's personnel for the purpose of interview and discussion related to such documents. Consultant shall, upon request, transfer certain records to the custody of City or the State, when City or State determines that the records possess long-term retention value.

11.7 Metro Health is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, Consultant agrees to permit City and/or State to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess Consultant's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by Metro Health, the Consultant shall furnish to Metro Health and the grantor of the funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by Metro Health and shall permit the City and Grantor of the Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement. Consultant agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Consultant of any liability to the City for failure to comply with the Terms of the Project or the terms of this Agreement.

11.8 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to Consultant, or Consultant subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

11.9 City agrees that it will present the findings of any such review to the Consultant in a timely manner and will attempt to convey information of Program strengths and weaknesses and assist with Program improvement.

11.10 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by Metro Health shall be submitted by Consultant to City within five (5) working days of the request. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines

necessary to comply with the single audit requirements. In the event that Consultant fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the City may, upon reasonable notice, suspend reimbursements to Consultant until such reports are delivered to City. Furthermore, the Consultant ensures that all information contained in all required reports or information submitted to City is accurate.

11.11 Unless disclosure is authorized by the City, Consultant agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. Consultant 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, Consultant shall give the Director prior written notice that such disclosure is required with a full and complete description regarding such requirement. Consultant shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Consultant's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the grantor of the funds, State's or the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, Consultant shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

11.12 Prohibited Political Activity. Consultant 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.

11.13 Consultant 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.

11.14 The prohibitions set forth in Sections 11.12 and 11.13 above 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.

11.15 To ensure that the above policies are complied with, Consultant shall provide every member of its personnel paid out of Agreement funds with a statement provided by Consultant 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 Metro Health. Consultant shall list the name and number of a contact person from Metro Health on the statement that Consultant's personnel can call to report said violations.

11.16 Consultant agrees that in any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the Consultant under this Agreement may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the Consultant's personnel is terminated.

11.17 Sections 11.12 through 11.17 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, Consultant and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

11.18 Adversarial proceedings. Except in circumstances where the following is in conflict with federal law or regulations pertaining to this grant, the Consultant 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 Consultant, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

XII.
INSURANCE

12.1 Prior to the commencement of any work under the Agreement, Consultant shall furnish copies of a completed Certificate(s) of Insurance to City's Government and Public Affairs Department, which shall be clearly labeled *"COVID-19 Informational Awareness Marketing Services",* in the Description of Operations block of the certificate. Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. Certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. City shall have no duty to pay or perform under the Agreement until such certificate and endorsements have been received and approved by the San Antonio Metropolitan Health District. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at Consultant's sole expense, 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:

INSURANCE TYPE	***LIMITS***
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,00
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

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. Professional Liability	$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
*6. Cyber Liability	$1,000,000 per claim $2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
*If Applicable	

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

12.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies; declaration page and all endorsements 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 or the underwriter of any such policies). Consultant shall be required to comply with any such request and shall submit a copy of the replacement certificate of insurance to City at the address listed in Article VIII. of this Agreement, within ten days of the requested change. Consultant shall pay any cost incurred resulting from said changes. All notices under this Article shall be given to City at the address listed for the City in Article VIII. of this Agreement.

12.6 Consultant 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 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 calendar days advance notice for nonpayment of premium.

12.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant'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 the Agreement.

12.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Consultant to stop work and/or withhold any payment(s) which become due, to Consultant until Consultant demonstrates compliance with the requirements hereof.

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

12.10 It is agreed that Consultant'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.

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

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

XIII.
INDEMNIFICATION

13.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT' activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and

their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this 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 CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

13.2 Defense Counsel - Consultant shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall reimburse City for all costs related to retaining defense counsel until such time as Consultant retains Counsel as required by this section. 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.

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

XIV. [section intentionally left blank]

XV.
ASSIGNMENT AND SUBCONTRACTING

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

15.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant intends to use the following subcontractors in the performance of this Agreement: MM

Creative. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved in writing by Director prior to the provision of any services by said subcontractor.

15.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an: entity as has been approved by Director.

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

15.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. If Consultant assigns, transfers, conveys, delegates, or otherwise disposes of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. Violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XVI.
INDEPENDENT CONTRACTOR

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

XVII.

NONDISCRIMINATION POLICY

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

17.2 The Consultant shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and 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. Consistent with the foregoing, Consultant agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Consultant further agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Consultant certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

a) Title VI and VII of the Civil Rights Act of 1964, as amended;

b) Section 504 of the Rehabilitation Act of 1973, as amended;

c) The Age Discrimination Act of 1975, as amended;

d) Title IX of the Education Amendments of 1972, as amended; (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.

XVIII.
CONFLICT OF INTEREST

18.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

18.2 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX.
AMENDMENTS

Except where this Agreement expressly provide otherwise, any alteration, addition, or deletion to the terms of this Agreement shall be effected by amendment, in writing, executed by both City and Consultant. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XX.
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 the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI.
LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXII.
COMPLIANCE

22.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations including as applicable, CDC General Terms and Conditions for Non-research awards at https://www.cdc.gov/grants/federalregulationspolicies/index.html, the Centers for Disease Control and Prevention (CDC). Consultant must also comply with the Notice of Funding Opportunity (NOFO) number IP19- 1901, entitled, *Immunization and Vaccines for Children*, which are hereby made a part of this Non-research award, hereinafter referred to as the Notice of Award (NoA).

22.2 Consultant acknowledges that funds for this Agreement are provided by a federal entity. As such, Consultant agrees to comply with applicable terms and conditions associated with said funds as directed by the federal entity, City or as required in this Agreement, including but not limited to: 2 C.F.R. Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards incorporated herein by reference. Consultant must adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Consultant hereunder originated. Consultant agrees to comply with all terms and conditions associated with said funds as directed by the City or as required in this Agreement.

22.3 2 CFR Part 200, entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Rules) are hereby incorporated by reference. Consultant shall comply with the following provisions and certifications:

22.3.1 Debarment and Suspension. Consultant is required to verify that neither the Consultant nor its principals, as defined at 2 CFR 180.995, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935, respectively. The Consultant is required to comply with 2 CFR Part 180, Subpart C and must include the requirement to comply with 2 CFR Part 180, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, Consultant certifies that:

Neither it nor its principals are presently debarred, suspended for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program; and

Consultant shall provide immediate written notice to City if, at any time during the term of this Agreement, including any renewals hereof. Consultant learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined that Consultant knowingly rendered an erroneous

certification, in addition to remedies available to City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Consultant agrees to comply with the requirements of 2 CFR Part 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this Agreement. Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

22.3.2 Consultant and its subcontractors 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.

22.3.3 Clean Air Act & Federal Water Pollution Control Act - (1) Consultant agrees to 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. Consultant 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. (2) Consultant agrees to include these requirements in each subcontract to this contract exceeding $150,000 financed in whole or in part with federal funds.

22.3.4 Certification for Contracts, Grants, Loans, and Cooperative Agreements Regarding Lobbying. The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts,

subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

22.4 Required Disclosures for Federal Awardee Performance and Integrity Information System (FAPIIS): Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the CDC and to the HHS OIG at the following addresses:

CDC, Office of Grants Services
Wayne Woods, Grants Management Officer Centers for Disease Control and Prevention Branch 1
2939 Flowers Road, M/S E-15 Atlanta, GA 30341
Email: kuv1@cdc.gov (Include "Mandatory Grant Disclosures" in subject line)

AND

U.S. Department of Health and Human Services
Office of the Inspector General

ATTN: Mandatory Grant Disclosures, Intake Coordinator
330 Independence Avenue, SW Cohen Building, Room 5527 Washington, DC 20201
Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line)
or Email: MandatoryGranteeDisclosures@oig.hhs.gov

Consultant must include this mandatory disclosure requirement in all subawards and contracts under this award. Failure to make required disclosures can result in any of the remedies described in 45 CFR75.371. Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

XXIII.
NONWAIVER OF PERFORMANCE

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

XXIV.
LAW APPLICABLE

24.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

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

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

XXV.
LEGAL AUTHORITY

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

XXVI.
PARTIES BOUND

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

XXVII.
CAPTIONS

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

XXVIII.
PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

28.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

(1) does not boycott Israel; and
(2) will not boycott Israel during the term of the contract.

28.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

28.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

28 .4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XIX.
PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXX. GENDER

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

XXXI. ENTIRE AGREEMENT

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

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**CONSULTANT**
Erik Walsh City Manager	Rose Reyes, President, San Antonio office
Date: _____	Date: _____

APPROVED AS TO FORM

City Attorney