

ORDINANCE 2021-05-06-0301

**AUTHORIZING THE EXECUTION OF AN ASSIGNMENT OF CONTRACT AND AMENDED AND RESTATED AGREEMENT TRANSFERRING ALL OBLIGATIONS OF THE OPERATING AGREEMENT WITH SAN ANTONIO BIKE SHARE TO BCYCLE.**

\* \* \* \* \*

**WHEREAS**, the City of San Antonio is committed to continued bicycle and pedestrian infrastructure investments, increasing sustainability, improving quality of life and well-being, reducing traffic congestions, and improving air quality; and

**WHEREAS**, bike share programs offer a flexible and convenient transportation and mobility option that allows users to have access to bicycles throughout the community offering first and last mile transportation options to augment public transportation; and

**WHEREAS**, on June 17, 2010, pursuant to Ordinance 2010-06-17-0563, the City of San Antonio (“City”) and San Antonio Bike Share (“SABS”) entered into an agreement (“Agreement”) which provided for the continuous operation and maintenance of a bike share program; and

**WHEREAS**, City staff formed a Working Group comprised of staff, stakeholders, and residents with competencies in bicycle advocacy, alternative transportation, marketing, business, and other relevant skills who reviewed various aspects of SABS operations, financial reports, and performance measures; and

**WHEREAS**, pursuant to the terms of the Agreement, SABS may assign the agreement to a qualified Contractor, contingent upon the approval of City; and

**WHEREAS**, BCycle is a national provider of docked bike share systems that provides the equipment and infrastructure on which the San Antonio Bike Share system is built; and

**WHEREAS**, BCycle wishes to assume the obligations of SABS under the Assignment of Contract and Amended and Restated Agreement, which shall mean that the City shall perform its obligations under the Amended and Restated Agreement in favor of BCycle and that the City and SABS shall each release the other from any obligations owed by the other to them under the Agreement; and

**WHEREAS**, the Working Group and the Transportation and Mobility Committee reviewed the proposed assignment and endorsed it as the best available option for the docked bike share system; and

**WHEREAS**, it is necessary to authorize the execution of the Assignment and Amended and Restated Agreement to complete the transfer of all obligations under the Agreement with SABS from the City to BCycle; **NOW THEREFORE:**

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

02 1-4-2021  
**SECTION 1.** The City Manager or designee, or the Director of Center City Development and Operations or designee, is authorized to execute an Assignment of Contract and Amended and Restated Agreement transferring all obligations of the operating agreement with SABS to BCycle. A copy of the Assignment and Amended and Restated Agreement in substantially final form are attached hereto and incorporated herein for all purposes as **Attachments I and II**.

**SECTION 2.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED and APPROVED** this 6<sup>th</sup> day of May, 2021.



**M A Y O R**  
Ron Nirenberg

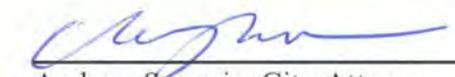
**ATTEST:**



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Tina J. Flores, City Clerk

**APPROVED AS TO FORM:**



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Andrew Segovia, City Attorney



# City of San Antonio

City Council

May 06, 2021

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**Item: 12**

**Enactment Number:**

**File Number: 21-3215**

**2021-05-06-0301**

Ordinance approving the assignment and amended and restated agreement transferring all obligations of the operating agreement with San Antonio Bike Share to BCycle. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development and Operations]

Councilmember Clayton H. Perry made a motion to approve. Councilmember Ana E. Sandoval seconded the motion. The motion passed by the following vote:

**Aye:** 8 Treviño, Andrews-Sullivan, Rocha Garcia, Cabello Havrda,  
Sandoval, Pelaez, Courage and Perry

**Absent:** 3 Nirenberg, Viagran and Gonzales

LR  
05/06/2021  
Item No. 12

## ATTACHMENT I

## ASSIGNMENT OF CONTRACT

This Assignment of Contract ("Assignment"), made and entered into in San Antonio, Bexar County, Texas, is effective as of June 3, 2021 ("Effective Date") by and between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager ("City"), San Antonio Bike Share, a Texas non-profit corporation ("Assignor"), and B-cycle, a Delaware limited liability company ("Assignee") pursuant to Ordinance 2010-06-17-0563 passed and approved by the City Council on June 17, 2010. The above-references parties may be collectively referred to herein as the "Parties".

WHEREAS, the City and Assignor are parties in the Bike Share/Rental and Bike Tours Program agreement ("Agreement") dated June 17, 2010 between Assignor and the City of San Antonio, a Municipal Corporation in the State of Texas; and

WHEREAS, Assignor desires to assign and Assignee desires to receive by assignment, all of Assignor's rights and obligations under the Agreement;

WHEREAS, CITY desires to consent to said Assignment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **ASSIGNMENT:** Assignor hereby assigns to Assignee all of Assignor's interests, rights and title held by Assignor in and to the Agreement.
2. **ASSUMPTION OF OBLIGATIONS:** Assignee acknowledges the receipt of a copy of the Agreement. As of the date of this Assignment, Assignee hereby assumes all of Assignor's interests, rights, duties and obligations remaining in the Agreement. As of the date of this Assignment, Assignee agrees to comply with all the terms, make all payments, and perform all conditions and covenants in the Agreement as if Assignee were an original party therein.
3. **ASSIGNOR'S REPRESENTATIONS:** Assignor warrants that the Agreement is in full force and effect and fully assignable or may be assigned with consent of Other Party. Assignor further warrants that the contract rights transferred in this Assignment are free of lien, encumbrance or adverse claim.
4. **BINDING EFFECT:** The covenants and conditions contained in the Assignment shall apply to and bind the Parties and their heirs, legal representatives, successors and permitted assigns.
5. **GOVERNING LAW:** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue and jurisdiction for

any claim or dispute arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

6. **WAIVER:** The failure of either Party to enforce any provisions of this Assignment shall not be deemed a waiver or limitation of that Party's right to subsequently enforce or compel strict compliance with every provision of the Assignment.
7. **COUNTERPARTS:** This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which go together shall constitute one and the same document. In the event that any signature hereof is delivered by facsimile transmission or by e-mail as an attached, scanned document such signature shall create a valid and binding obligation of the Party or Other Party executing the same with the same force and effect as if such e-mailed or facsimile signature page were an original thereof.
8. **CONSENT TO ASSIGNMENT:** Consenting Party hereby consents and agrees to the assignment of the Agreement from Assignor to Assignee upon the terms and conditions set forth herein. Consenting Party hereby releases the Assignor from the Agreement, upon the terms and conditions set forth herein. It is the intent and understanding of Consenting Party that the Contract shall not be modified or altered in any manner, except as to the substitution of Assignee for Assignee.

**IN WITNESS WHEREOF**, the authorized representatives of the Parties have caused this Assignment to be executed effective as of the Effective Date.

- *Remainder of Page Intentionally Left Blank -Signature Page on Following Page -*

**ASSIGNOR: SAN ANTONIO BIKE SHARE**

**ASSIGNEE: B-cycle, LLC**



Name: JD Simpson

Name: Morgan Ramaker

Title: Executive Director

Title: Executive Director

Date: 4-28-2021

Date: 4-28-21

**CITY CONSENT (CONSENTING PARTY):**

The undersigned, CITY, hereby consents to the foregoing Assignment and releases the Assignor from its obligations and liabilities arising under the Agreement and accepts Assignee as a party to the Contract in place of Assignor.

**CITY OF SAN ANTONIO,  
A TEXAS MUNICIPAL CORPORATION**

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Tina J. Flores  
City Clerk

As to Form:

\_\_\_\_\_  
Assistant City Attorney

LR  
05/06/2021  
Item No. 12

**ATTACHMENT II**

**AMENDED AND RESTATED AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND SAN ANTONIO BIKE SHARE  
FOR BIKE SHARE/RENTAL AND BIKE TOUR PROGRAM AS ASSIGNED TO B-CYCLE**

City of San Antonio presently contracts with San Antonio Bike Share ("BIKE SHARE"), for services for the Bike Share/Rental and Bike Tours Program, pursuant to an Agreement approved by City Council June 17, 2010, through City Council Ordinance No. 2010-06-17-0563. The Parties to that Agreement now wish to assign the Agreement to B-Cycle, LLC ("Contractor") with amendments.

This Amended and Restated Agreement ("Agreement"), is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("CITY"), acting by and through its designated representative, and B-CYCLE ("Contractor"), a Delaware limited liability company acting by and through its designated representative, Morgan Ramaker, Executive Director. City and Contractor singularly or collectively shall be referred to herein as "Party" or the "Parties".

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:

- 1.1 "ADA Ramp" means a combined ramp and landing to accomplish a change in level at a curb in order to provide access to pedestrians using wheelchairs, other devices or aids.
- 1.2 "Bicycle" or "Bike" refers available for self-service rental at B-Cycle stations. This term shall also include "Ebike" or "ebicycles" with pedals and electric-propulsion assistance or "pedal assistance".
- 1.3 "Bike share system" means providing bicycles for short-term rentals for point to point trips.
- 1.4 Daily users or longer term members sign up and pay a fee to gain access to the system and rent a bicycle. Users can rent a bicycle at one bicycle station and return the bicycle to another authorized station within the system area.
- 1.5 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.6 "City Sites" means the sites located on City streets, public-right of way or other public property owned or controlled by City where Program is operated.

- 1.7 "Contractor" is defined in the preamble of this Agreement and includes its successors.
- 1.8 "Director" shall mean the director of the City's Center City Development and Operations Department.
- 1.9 "Docks" means the locking mechanisms mounted on the station platforms designed to receive into and release from locked storage a bicycle.
- 1.10 "Fleet" means all bicycles operated by the Contractor during the course of this Agreement.
- 1.11 "Kiosk(s)" means the self-service terminal which provides bicycle rental instructions, payment equipment (i.e. credit card device), and all other means necessary for the rental of bicycles.
- 1.12 "Mobile application" means the software installed on a user's mobile device that allows the user to engage with a dock, rent a vehicle, or view account information.
- 1.13 "Right of way" means streets, sidewalks, alleys, and other pathways open to the public, excluding those found in public parks.
- 1.14 "Service Area" shall refer to the geographical area within a jurisdiction where a bike sharing program offers service for its users.
- 1.15 "Services" shall mean the Operation Services, Software Services, and the Installation Services.
- 1.16 "Station" means the structure that holds the automated customer kiosk, and the docks that dispense the bicycles.
- 1.17 "User" means the person who is in actual physical control of a bicycle as referred to under this Agreement.

## II. TERM

- 2.1 The term of this Agreement is amended and shall be for one year beginning on June 3, 2021. The one-year term shall renew automatically every year for subsequent one-year terms.

Either party may terminate this Agreement by providing written notice to the other party, provided however the termination shall take effect no sooner than three hundred sixty five (365) calendar days after written notice is received.

### III. SCOPE OF SERVICES

3.1 The Contractor agrees to perform the services described in the Agreement. The primary purposes of the Work is for the Contractor to design, acquire, install, implement, operate and manage a bike-sharing system for the benefit of the public at large (the "Project") at locations approved by the City in accordance with all terms and conditions of this Agreement.

3.2 Contractor shall:

- a. Procure, maintain, and replace sufficient equipment to operate the Project. All equipment used in the performance of the Project shall be maintained in an operational manner to industry standards,
- b. Provide all of the equipment and software required to operate the Program,
- c. Procure all of the relevant licenses and rights to use the equipment and software to operate the Program,
- d. Procure all licenses and permits from applicable governmental agencies that are required to provide the Services from all applicable governmental agencies, including obtaining permits for new or altered stations,
- e. Bear all costs for the design, construction, and installation of future stations, to include any electrical work, IT networking, or foundation pads, footings, or support required, and
- f. Maintain accurate and up to date inventory of all equipment including serial numbers.
- g. Comply with all applicable laws, rules and regulations of the United States, the State of Texas and the City of San Antonio.

3.3 Bicycles shall:

- 3.3.1 Comply with all applicable local, state, and federal laws and regulations covering Bicycles.
- 3.3.2 Be equipped with a lamp on the front of the bicycles that emits a white light visible from a distance of at least 500 feet in front of the bicycle; and on the rear of the bicycle a red reflector that is visible when directly in front of lawful upper beams of

motor vehicle headlamps from all distances from 50 to 300 feet to the rear of the bicycle; or, a lamp that emits a red light visible from a distance of 500 feet to the rear of the bicycle.

- 3.3.3 Be branded with an identification number and Contractor's Trademark shall appear on each Bicycle in a uniform manner.
- 3.3.4 Be designed to withstand the demands of outdoor, shared use; as well as, be attractive, highly durable, theft and vandal resistant; able to reasonably withstand weather conditions; safe, and easy to use by a wide range of Users.
- 3.3.5 Bicycles may not display any third-party advertisements unless expressly authorized and approved by the City.
- 3.3.6 Contractor must seek and receive approval from the Director to augment the type or model of bicycle deployed in the right of way.

3.4 Contractor will identify Station locations to optimize utilization and maximize ridership, subject to approval by Director. The City reserves the right to designate, create and remove station locations on all publicly owned property and right-of-ways. The City agrees to consider the cost to B-Cycle and the potential for system disruption in exercising any rights under this Section. Contractor shall pay all costs associated with site preparation, installation of all equipment, leases, permits, and all ongoing operations, maintenance and support for all locations selected.

All parking must be in accordance with the following:

- 3.4.1 Bicycles shall be parked in accordance with applicable Federal, State, and local laws, rules, and regulations, and in accordance with the Agreement.
- 3.4.2 Use of public sidewalks must not: i) adversely affect the streets or sidewalks (ii) inhibit pedestrian movement (iii) act as a barrier to an accessible path of travel or (iv) create conditions which are a threat to public safety and security. Should the City find any bicycles deemed to be a threat to public safety and security, City will immediately contact Contractor, who will have one (1) hour to retrieve the bicycle(s) and rectify the situation. Failure to do so may result in immediate removal by the City at the expense of the Contractor.
- 3.4.3 Bicycles may be parked on private property only with the permission of the private property owner.

- 3.4.4 Bicycles shall stand upright when parked.
  - 3.4.5 Contractor must actively manage the Bicycle Fleet to ensure appropriate and orderly parking and the free and unobstructed use of the Right-of-Way.
  - 3.4.6 An inoperable bicycle, or any bicycle that is not safe to operate, shall immediately be made not available to the public and removed by Contractor within four (4) business hours of notice, with business hours being Monday – Friday 9am – 5pm, or a timeframe otherwise proposed by the Contractor and agreed to by the City.
  - 3.4.7 City may require Contractor to remove bicycles from stations on a temporary basis to allow for construction, events, or in the interest of public health and safety.
- 3.5 Relocation of Bicycles. For Bicycles on public property, the City may require the Contractor to relocate Bicycles to another Station if the current Station location needs to be used for a foreseeable municipal purpose. City shall have also have the right, but not the obligation, to relocate Bicycles to another location if City deems necessary.
- 3.6 System Maintenance. Contractor must:
- 3.6.1 Ensure all bicycles in its fleet that are available to the public are in good working order and safe to operate. Contractor must include a regular maintenance schedule in the quarterly report.
  - 3.6.2 Provide equipment inspection, maintenance, and repair that are consistent with or exceeds manufacturer's recommendations.
  - 3.6.3 If operational in winter, provide services to ensure Bicycles are accessible and safe to use. Contractor must provide a plan for operations in the case of weather-related emergencies that prioritizes the safety of users and is responsive to City's concerns.
- 3.7 Communication with City and Operational Requirements.
- 3.7.1 Contractor must appoint a key point of contact for the Contractor's operations.
  - 3.7.2 The key point of contact or a designee must attend all meetings required by City in order to implement, monitor, and evaluate the Program in accordance with this Agreement. The Contractor must develop, prepare, update, and distribute reports as required by this Agreement, unless otherwise instructed by City.
  - 3.7.3 Contractor shall be responsible for managing and directing the day-to-day

operations of the Program, including reporting on resolution or complaints or concerns identified through the City's 311 service.

- 3.7.4 Contractor must designate and maintain a fleet manager with a presence within the City Limits during business hours Monday – Friday.
  - 3.7.5 Contractor must maintain an operational center within the City Limits throughout the life of this Agreement and any subsequent extensions/renewals.
  - 3.7.6 Annual Reporting. Contractor will prepare an annual report that provides a summary of Program information required and/or requested relevant to the prior year's operations. The report will be provided to the Director pursuant to Section 3.16. The report should include but is not limited to: citing the number of employees within the City Limits by position type, a description of benefits, and the minimum wages paid to those positions. The report should also include a summary of the revenues and expenses of the local system, trip counts, station utilization, and other information requested by the Director related to the performance of the local network where the requested information is tracked, available to contractor, and reasonably accessible.
  - 3.7.7 Quarterly Reporting. Contractor shall provide to the Director quarterly reports to the Director, as required pursuant to this Agreement. The quarterly report should include, but is not limited to: membership, ridership, fees, station performance or utilization, maintenance activities, environment and health impacts, collisions, accidents, or injuries, stolen/missing bicycles, and other required relevant and reasonably accessible information as requested by Director.
  - 3.7.8 Contractor must prepare a summary presentation of its annual performance as well as plans and performance measures at the beginning of each calendar year. At the request of the Director, contractor must present the information to City staff, Council Committees, Boards or Commissions, and external entities. Contractor must bear all relevant costs related to creating these materials and ensuring that appropriate staff are available to present.
- 3.8 Customer Communication and Outreach. Contractor shall:
- 3.8.1 Provide customer service via multiple mechanisms (e.g. mobile applications, website, toll-free phone number), enabling members of the public and/or Users to ask questions, report safety concerns, report bicycles that are damaged or improperly parked, request refunds, or report complaints. Customer service representatives shall be competent and knowledgeable to answer questions including, but not limited to, parking and prohibitions for the Bicycles.

- 3.8.2 Maintain customer service support system with hours clearly stated on Stations and on the B-Cycle website. The customer support must be available in both English and Spanish. The hours for the customer support must be provided at least between the hours of 8 a.m. and 8 p.m.
- 3.8.3 Ensure that all Project Bicycles, stations, docks, and signage contain a conspicuously posted toll-free telephone number to which the public may direct complaints and comments and instructions for filing a complaint. The Contractor establish and maintain efficient procedures for handling complaints forwarded to Contractor by City (including via the City's 3-1-1 call center). A summary of customer comments, complaints, and resolutions shall be provided in the quarterly report.
- 3.8.4 Provide a reliable method for other municipalities or private property owners (in addition to City) to report issues directly to the Contractor should bicycles end up outside the system service area or if other system-related concerns arise.
- 3.8.5 Maintain computer records of all oral and written service complaints registered with Contractor from system Users and the general public ("Complaint Record"). Contractor shall record the Complaint in the customer file contained in the Contractor's database, noting the name of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. The nature of complaint shall be categorized to facilitate understanding and evaluation. City has the right under this Agreement to inspect the Complaint Record and Contractor's records of local Complaints made against Contractor upon written request to Contractor upon two (2) business days' notice.
- 3.8.6 Educate Users with relevant information on the website, social media platforms, and through the system mobile application concerning:
- a. laws applicable to riding and operating a bicycle or eBicycle in the City; and
  - b. Bicycle safety.
- 3.8.7 Encourage the wearing of helmets while riding and operating a Bicycle or e-bicycle within the City.
- 3.8.8 Provide sufficient staff to handle rentals, Bicycle dispatching, operations, customer relations, and other administrative responsibilities as required by this Agreement.
- 3.8.9 Lead outreach efforts to business associations, universities, major developers and



convention bulk rate plans, and variable fare structures that incentivize Subscribed User distribution.

3.10.5 Contractor shall have the ability to create special short-term promotional and event fares ("Short Term Promotion") without seeking City approval provided that the duration of the Short Term Promotion shall not exceed fourteen (14) days. The price for these promotional passes may not exceed the cost of what a user or entity would pay under the approved fee structure. The intention of this section is not to allow contractor to charge "surge pricing" for significant events, holidays, or times of high usage.

3.10.4 Methods of Payment. Contractor shall accept online and mobile-based payments as well as implement appropriate payment methodologies to accommodate individuals without credit or debit cards including, but not limited to, cash payment methodologies. Contractor shall make its good faith best efforts to provide fiscally sustainable payment methodologies and Low-Income Plans to promote accessibility of the Bicycle Sharing Program to residents and visitors alike, such as through partnership(s) with foundations, community organizations, financial institutions, and/or others to assist in securing collateral and implementing reduced-cost option(s).

3.11 Technology. Throughout the term of this Agreement and any renewals/extensions, Contractor shall have the right and obligation to install, operate, manage and maintain the Project. Contractor shall provide trip data to the City at no additional cost. Contractor must use commercially reasonable efforts to offer state-of-the-art Bike share technology utilizing the following advanced technologies:

- a. A mobile application to accept payments, handles all aspects of rental transactions, host user profiles with user history, and provides information on bike availability and locations. The application must allow users to report issues with the Bicycle or Bicycle docking; and
- b. RFID and/or NFC technology that enables customer to rent Bicycles from mobile devices, access cards or other similar devices.

3.12 Condition of Right of Way.

- a. City makes the Right-of-Way available to Contractor in an "AS IS" and "WITH ALL FAULTS" condition. City makes no representations or warranties concerning the condition of the Right-of-Way or its suitability for use by Contractor or its customers and Users, and assumes no duty to warn either Contractor or its customers and Users concerning conditions that exist now or may arise in the future; and
- b. City assumes no liability for loss or damage to Contractor's Bicycles, or other

property. Contractor agrees that City is not responsible for providing security at any location where Contractor's Bicycles are stored or located, and Contractor hereby waives any claim against City in the event Contractor's Bicycles, or other property are lost, damaged, or stolen.

3.13 Maintenance and Care of portion of Right-of-Way. Contractor expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost, or destroyed as a result of the Contractor's use of Right-of-Way and other City property. Should Contractor fail to repair, replace, or otherwise restore such real or personal property, Contractor expressly agrees to pay City's costs in making such repairs, replacements, or restorations. In the instance of failure to pay, the City may take whatever actions are necessary under this Agreement or at law, up to and including termination of the Agreement.

3.14 Operations & Maintenance. Contractor shall:

3.14.1 Be responsible to maintain the Bicycle fleet. Contractor shall be solely responsible for all maintenance and service costs in order to maintain the Bicycle Fleet and associated maintenance;

3.14.3 City shall have the right at reasonable times and upon reasonable notice to inspect the installation, operation, and maintenance of the Program and its associated elements.

3.15 Advertising. Contractor shall have the right to provide commercial advertisement on the Bikes and equipment ("Advertisement"). In accordance with the following:

3.15.1 In order to support the operation of the Bike Share Program, Contractor will solicit sponsors willing to provide financial sponsorship in exchange for signage on the bicycle-sharing stations and/or the bicycles ("Sponsor Signs"). The content of the Sponsor Signs, and bicycle signs are subject to these sponsorship and advertising guidelines ("Guidelines"). No messages other than those selected under these Guidelines are permitted on bicycle-sharing stations and/or the bicycles. The bicycle-sharing program facilities, equipment and bicycles are not a public forum for public debate or discourse.

3.15.2 Contractor is solely responsible for the selection of any sponsors and for ensuring that all Sponsor Signs, signs on non-City owned property, and signs on bicycles (collectively "Program Signs") comply with these Guidelines. Contractor shall forward to the City for approval any proposed Program Signs that might violate one or more of these Guidelines. Contractor will promptly remove any sign determined by the City to be in violation of these Guidelines.

3.15.3 All Program Signs shall comply with the following guidelines and restrictions:

3.15.3.1 Sponsors. Sponsors may not include the following:

- Any beer, liquor, or wine stores, distributors, or manufacturers.
- Taverns, which include any place in which fermented malt beverages are sold for consumption upon said premises, except for those whose sale of alcohol beverages accounts for 50% or less of the establishment's gross receipts.
- Adult-only orientated businesses or services.
- Tobacco companies or merchants whose sale of tobacco and tobacco related products make up a significant part of its business.
- Wagering related businesses, such as casinos or on-line gambling sites.
- Any entity whose logo and/or business name includes any reference to the above activities for which sponsorship is not available, or any of the prohibited copy listed below.

3.15.3.2 Prohibited Copy. Sign copy may not include the following:

- Copy that is illegal, obscene, libelous or fraudulent, or that refers to any of the above activities for which sponsorship is not available.
- Political messages of any kind.
- Any message that, in the opinion of the City, is disruptive, detrimental or adverse to the San Antonio Program specifically or the City's interests in general.

3.15.3.3 During the term of the Operating Agreement, the City may find it necessary to amend these Guidelines. If the City finds that an amendment to these Guidelines is necessary, the City may unilaterally amend these guidelines upon written notice to Contractor, however the City shall be obligated to discuss said amendments with Contractor prior to providing this notice. Said amendments shall be effective thirty (30) days after said notice is provided to Contractor.

### 3.16 Data Collection and Reporting.

3.16.1 Contractor shall maintain such information management system as are needed to collect, store, and organize operational financial data, and to produce the reports and plans as specified in this Agreement. Contractor must provide the City and our designees with additional data in the format and frequency approved by the City.

3.16.2 Trip-level data must include:

- (i) Anonymized data for each trip record to inform and support safe and

effective management of the System;

3.16.3 Anonymized and aggregated data for the City that must include, but is not limited to:

- i) Total number of bikes in service;
- ii) Total number of bikes out of service (damaged);
- iii) Total unique users of System;
- iv) Total equity users of System;
- v) Trip number by day, week and month;
- vi) Detailed, aggregate trip origin/destination information for planning purposes;
- vii) Average trip length (est.);
- viii) Average trip duration (time);
- ix) Total miles ridden (est.)
- x) Total number of rentals;

3.16.4 Information related to the maintenance and oversight of the system that must include, but is not limited to:

- i) Total number of stations in service;
- ii) Total number of stations out of service;
- iii) Total number of docks in service;
- iv) Summary of dock maintenance activities, including closures of five or more consecutive days due to maintenance or other factors;
- v) Summary of bike redistribution activities;
- vi) Summary of customer comments/complaints and resolution;
- vii) Summary of theft/vandalism and resolution;
- viii) Summary of bike maintenance activities.

3.16.5 Contractor will collaborate with City to gather and report data on community benefits, such as calories burned and reduction in greenhouse gas emissions.

3.16.6 Contractor shall keep a record of every incident or event involving a Bicycle user, and/or Bicycle, resulting in personal injury to the user or others, or property damage to the Bicycle or the property of others. This information shall also be provided in Contractor's quarterly report to City.

3.17 Any reporting required under this contract, or otherwise required by City, are to be provided to Director within fifteen (15) business days of the time period referenced for the report [e.g. quarterly reports are required within fifteen (15) business days following the last calendar day of the prior month].

3.18 Data Security.

- 3.18.1 Contractor shall be responsible for providing secure system applications and providing the appropriate safeguards within the environment, and should include the use of encryption software and unique IDs and passwords to protect the data's confidentiality, integrity, and availability. All applications must meet security standards appropriate for the information type that they will be storing, processing or transmitting.
- 3.18.2 Contractor agrees to work with the City's Information Technology Services Department to identify the appropriate form of data and aggregation for the City's use.
- 3.18.3 The Parties acknowledge that information provided under this Agreement may be subject to disclosure under the Texas Public Information Act. Data collected by the City will be, except as otherwise required by law, kept confidential by the City. In the event of a request for disclosure, City will provide Contractor with notice of such request.

**IV. COMPENSATION TO CONTRACTOR**

- 4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees that Contractor is entitled to collect Subscribed User Fees from the public, collect Sponsorship Fees from third parties, and create any other revenue sources for the operation and maintenance of the Bicycle Sharing Project it deems appropriate in accordance with applicable law and with approval from the Director.
- 4.2 COMPENSATION TO CONTRACTOR FROM CITY. The City will provide no financial compensation to Contractor to provide the Project during the Term or any Extension/Renewal of this Agreement.
- 4.3 Contractor is responsible for billing the User and collecting rates. Contractor shall be entitled to establish rules, procedure and requirements for consumers to use the System and for collecting any amount payable for the Project.
- 4.4 Contractor shall record all amounts received from Users into an appropriate accounting format.

**V. OWNERSHIP**

- 5.1 Ownership of Assets. The Parties understand and agree that title to assets (including but not limited to stations, docks, bicycles, supplies and other related equipment) provided by City regardless of source, under this agreement will be held by Contractor in trust for the public during the operation of the Program. It remains the intention of the City to vest the Contractor with title to the assets, to be held in public trust, provided that the Contractor continues the existence and operates the Program, and provided that the Contractor:
- 1) continues to successfully implement the Program; and
  - 2) provides accurate and regular financial and programmatic reports (annually and quarterly) as mutually agreed to between the Parties.
- 5.2 Contractor must maintain property records that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- 5.3 A physical inventory of the property must be taken, and the results reconciled with the property records at least once a year. Written documentation of physical inventory shall be submitted to the Director. The inventory certification will disclose any obsolescence, condition of bikes, etc. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated and reported to the Director. Adequate maintenance procedures must be developed to keep the property in good condition.
- 5.4 When replacing City assets, the Contractor may sell or trade the City assets held in trust under this Agreement, subject to the approval of the Director. The proceeds of the sale shall be used to offset the cost of replacement property or infrastructure. All assets acquired through the sale or trade of City assets or the proceeds resulting from those transactions will remain City property.
- 5.5 Notwithstanding the above, and any other contrary provision in the Agreement documents, the City finds and declares that the Program serves a public purpose, is a public good and it is in the public interest that such a program continue past the termination of this Agreement; therefore, upon final termination of the agreement, as provided for in the prior Section II. Term, including any subsequent renewal and extension period, it is the intention of the City of San Antonio to vest all rights, title and interest in the City funded assets to the Contractor, provided, however, that Contractor meets and complies with all the terms of the Agreement, as amended or modified, and provided that Contractor continues to hold title to the assets in public trust. In the event Contractor shall cease operation of the Program at any future date and any City assets remain, Contractor shall transfer title and possession of those specific assets to the City.

## VI. RECORDS RETENTION

- 6.1 Contractor 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, or its designees, 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 Contractor and its subcontractors, if any, shall retain any and all documents produced as a result of services provided hereunder for a period of three (3) 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, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City, or its designees, 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 Contractor to return said documents to City prior to or at the conclusion of said retention.
- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that city will process and handle all such requests.

## 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 Section II, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by either party upon 365 calendar days written notice, which notice shall be provided in accordance with this Agreement.
- 7.3. Termination For Cause. Upon written notice, which notice shall be provided in accordance with this Agreement, 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 by the City.
  - 7.3.2 Bankruptcy or selling substantially all of company's assets or the fleet as defined in this agreement.
  - 7.3.3 Investigation or indictment of the Contractor or any of its executives for felonies or regulatory violations subject to penalties or enforcement actions that may materially affect Contractor's operations, or that may impact the integrity and reputation of the City.
- 7.4 Defaults With Opportunity for Cure. Should the Contractor default in the performance of this Agreement in a manner stated below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. The Contractor shall have ten (10) calendar days after receipt of the written notice to cure such default. If the Contractor 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 entity to provide Bike Share services as established in this Agreement.
- i. Failing to perform or failing to comply with any covenant herein required.
  - ii. Performing unsatisfactorily.
- 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, Contractor 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 Agreement, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with the Records Retention provisions of this Agreement. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense.
- 7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City any remaining monies owed, if any, to City under this Agreement through the effective date of termination.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations within the City as authorized by 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 Contractor for any default hereunder or other action.

### VIII. NOTICE

- 8.1 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 intended for City, to:

Name  
Title  
Center City Development Office  
Address  
San Antonio, Texas 78205

If intended for Contractor, to

Name  
Title  
Entity  
Address  
City, State, Zip

### IX. NON-DISCRIMINATION

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

### X. INSURANCE

- 10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City, which shall be clearly labeled "Bike Share Operations" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable

endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development and Operations. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

10.3 Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal/ Advertising Injury</li> <li>e. Contractual Liability</li> <li>f. Damage to property rented by you</li> </ul>	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as

completion of the professional services	damages by reason of any act, malpractice, error, or omission in professional services.
*6. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
7. Environmental Insurance – (Contractor's Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
*8. Explosion, Collapse, Underground Property Hazard Liability	\$2,000,000 per claim

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and

activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

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

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

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

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

10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 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.

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

## XI. INDEMNIFICATION

- 11.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to Contractor' activities under this Agreement, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, Contractor or subcontractor of Contractor, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or Contractor known to Contractor related to or arising out of Contractor' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Contractor's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.
- 11.3 Defense Counsel - Contractor 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 Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall reimburse City for all costs related to retaining defense counsel until such time as Contractor 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.

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

## **XII. INDEPENDENT CONTRACTOR**

- 12.0 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractors; that the doctrine of "respondeat superior" shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and Contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. 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 Contractor under this Agreement and that the Contractor has no authority to bind the City.

## **XIII. CONFLICT OF INTEREST**

- 13.1 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.

- 13.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XIV. AMENDMENTS**

- 14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. The Director may execute parking plan, Fleet size, and sensitive area designations with no further requirement for City Council approval.

#### **XV. SEVERABILITY**

- 15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City 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.

#### **XVI. LICENSES/CERTIFICATIONS**

- 16.1 Contractor warrants and certifies that Contractor 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.

#### **XVII. COMPLIANCE**

- 17.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

#### **XIII. NONWAIVER OF PERFORMANCE**

- 18.1 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 XVI. 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.

#### **XIX. LAW APPLICABLE & LEGAL FEES**

- 19.1 **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.**
- 19.2 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.
- 19.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

#### **XX. LEGAL AUTHORITY**

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

#### **XXI. PARTIES BOUND**

- 21.0 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.

## **XXII. CAPTIONS**

- 22.0 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.

## **XXIII. INCORPORATION OF EXHIBITS**

- 23.0 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit 1 \_\_\_\_\_

Exhibit 2 \_\_\_\_\_

## **XXIV. ENTIRE AGREEMENT**

- 24.0 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 XIV. Amendments.

## **XX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 25.1 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.
- 25.2 "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.
- 25.3 "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.

25.4 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.

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

26.0 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. Contractor 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 Contractor's certification. If found to be false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

**XXVII. COUNTERPARTS, FACSIMILE OR EMAIL SIGNATURES**

27.0 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile or email counterparts of the signature pages.

**IN WITNESS THEREOF**, the Parties hereto have made and executed this Agreement, to be effective on the date of the last signature below ("Effective Date").

**CITY OF SAN ANTONIO**

**CONTRACTOR**

By: \_\_\_\_\_  
City of San Antonio

By:  \_\_\_\_\_

Date: \_\_\_\_\_

Date: 4-27-2021

Attest:

As to Form:

\_\_\_\_\_  
Tina J. Flores  
City Clerk

\_\_\_\_\_  
Assistant City Attorney