

ORDINANCE **2021-02-11-0100**

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HNX ENTERPRISES, LLC TO PROVIDE ON-CALL REAL ESTATE SERVICES FOR THE CITY'S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AFFORDABLE HOUSING PROGRAMS.

* * * * *

WHEREAS, the City of San Antonio (City) is recipient of federal funding received from the U.S. Department of Housing and Urban Development (HUD) including the Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), and Neighborhood Stabilization Program (NSP) funds; and

WHEREAS, the City utilizes a portion of said federal CDBG and HOME funding for its Owner-Occupied Rehabilitation and Reconstruction Program activities; and

WHEREAS, the City issued a Request for Qualifications (RFQ) on October 23, 2020 to select a consultant to perform on-call residential comparative market analysis services for its Owner-Occupied Rehabilitation and Reconstruction Program; and

WHEREAS, an evaluation committee made up of City staff evaluated the two (2) submissions received in response to the RFQ using the following scoring criteria: Experience, Background, and Qualifications (60 points); Proposed Plan (25 points); Section 3 Business Certification (10 points); and, Veteran-Owned Small Business Preference Program (5 points); and

WHEREAS, HNX Enterprises, LLC was the highest scoring applicant and the evaluation committee recommended entering into professional service agreement with it; and

WHEREAS, this ordinance authorizes the execution of a professional services agreement with HNX Enterprises, LLC to provide real estate services for the Owner-Occupied Rehabilitation and Reconstruction Program; **NOW THEREFORE:**

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

SECTION 1. The City Manager or his designee, the Director of the Neighborhood and Housing Services Department (NHSD) or her designee, or the Assistant Director of NHSD is authorized to negotiate and execute a professional service agreement with HNX Enterprises, LLC to provide comparative market analysis services for the Owner-Occupied Rehabilitation and Reconstruction Program funded with HOME Investment Partnerships Program (HOME) and/or Community Development Block Grant (CDBG) federal funding. The term of the agreement is for four years, with one (1) one-year renewal option, in an amount not to exceed \$300,000.00 over the course of the contract term. The substantially complete contract attached hereto as **Attachment I** and incorporated fully herein is approved, subject to the final negotiation and execution by an authorized representative of the City under the delegated authority in this Ordinance. The execution authority granted by this ordinance shall expire 60 days from the effective date.

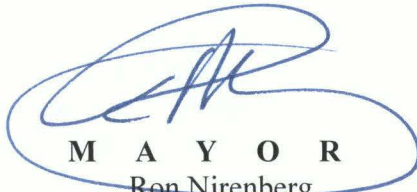
SECTION 2. Funding in the amount up to \$60,000.00 is available for the first year from fund 25229000, and is included in the FY2021 HUD Action Plan and Budget approved by City Council on August 13, 2020. Funding for the remainder of the agreement will be contingent upon City Council approval of each subsequent HUD Annual Action Plan and Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to HNX Enterprises, LLC upon issuance of a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.


SECTION 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 11th day of February, 2021.



M A Y O R
Ron Nirenberg

ATTEST:



Tina Flores, City Clerk

APPROVED AS TO FORM:

Scott
Zimmerer

Digitally signed by
Scott Zimmerer
Date: 2021.02.05
09:14:59 -06'00'

Andrew Segovia, City Attorney



City of San Antonio

City Council

February 11, 2021

Item: 17

File Number: 21-1235

Enactment Number:

2021-02-11-0100

Ordinance approving a Professional Services Agreement with HNX Enterprises, LLC to conduct on-call real estate services in an amount up to \$60,000.00 per year for the City's U.S. Department of Housing and Urban Development funded affordable housing programs for four years, with an option to renew. [Lori Houston, Assistant City Manager; Verónica R. Soto, Director, Neighborhood and Housing Services]

Councilmember Ana E. Sandoval made a motion to approve. Councilmember Adriana Rocha Garcia seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

SZ
02/11/2021
Item No. 17

ATTACHMENT I
COVER SHEET

THIS IS A DRAFT CONTRACT – SUBJECT TO FINAL NEGOTIATION

**PROFESSIONAL SERVICES AGREEMENT
FOR HIP RESIDENTIAL HOUSING INSPECTION SERVICES**

This PROFESSIONAL SERVICES AGREEMENT (“**AGREEMENT**”) is entered into by and between the City of San Antonio (“**CITY**”), a Texas municipal corporation, and HNX Enterprises LLC (“**CONTRACTOR**”), a Texas limited liability company. CITY and CONTRACTOR are sometimes referred to herein each individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, CITY is an entitlement grantee for certain funds (“**Grant Funds**”) from the U.S. Department of Housing and Urban Development (“**HUD**”) including funds from the Community Development Block Grant (“**CDBG**”), HOME Investment Partnerships Program (“**HOME**”), and Neighborhood Stabilization Program (“**NSP**”); and

WHEREAS, CITY and CONTRACTOR agreed upon terms by which CONTRACTOR shall provide on-call real estate services in connection with CITY’s Owner-Occupied Rehabilitation and Reconstruction Program (OORR) funded with HOME, CDBG and other funds; and

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I
TERM**

1.1 Unless terminated earlier pursuant to any provision hereof, this AGREEMENT shall commence on the Effective Date and shall terminate on the **fourth (4th) anniversary** of the Effective Date (“**Term**”).

1.2 CITY may, in CITY’s sole and absolute discretion, unilaterally elect to renew and extend this CONTRACT for up to **one (1) additional year** (the “**Renewal Period**”) on the same terms provided herein. CITY may elect to exercise the option to renew and extend at any time, subject only to and contingent upon the appropriation by City Council and the availability of funding for the Renewal Period.

**ARTICLE II
SCOPE OF SERVICES**

2.1 By this AGREEMENT, CITY hereby engages CONTRACTOR to perform the services detailed in the Scope of Service attached hereto as Exhibit “A” (“**Services**”), and CONTRACTOR hereby accepts such engagement in accordance with the terms and conditions of this AGREEMENT. The Services shall be provided by CONTRACTOR in phases or intervals as denoted in the attached as Exhibit “B” (“**Price Schedule**”) and CONTRACTOR shall be compensated at the rates therein specified.

2.2 All of the Services shall be performed by CONTRACTOR to the satisfaction of Grants Administrator of the Neighborhood and Housing Services Department (“**Grants Administrator**”). The determination made by Grants Administrator shall be final, binding, and conclusive on the Parties. CITY shall be under no obligation to pay for any work performed by CONTRACTOR, which is not satisfactory

to Grants Administrator. CITY shall have the right to terminate this AGREEMENT, in accordance with Article VII, in whole or in part, should CONTRACTOR's work not be satisfactory to Grants Administrator; *provided, however*, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY elect not to terminate.

2.3 CITY shall issue a written work authorization to CONTRACTOR before CONTRACTOR commences any Services for any project. CITY shall not be liable to CONTRACTOR for any Services rendered for which there has not been a written work authorization issued by CITY.

ARTICLE III COMPENSATION

3.1 In consideration of, and upon CONTRACTOR's performance in a satisfactory, timely, and efficient manner, as determined solely by CITY, of the Services, CITY agrees to pay CONTRACTOR an aggregate amount not to exceed **THREE HUNDRED AND 00/100 DOLLARS (\$300,000.00)** as total compensation for performance of the Services during the Term and, if any, the Renewal Period. CONTRACTOR's compensation is exclusive of all out-of-pocket expenses incurred by CONTRACTOR in the course of performing the Services. CONTRACTOR acknowledges and agrees that this is an on-call service agreement and there is no guarantee of a minimum amount of compensation hereunder.

3.2 No additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by CITY. Total payments to CONTRACTOR cannot exceed that amount set forth in Section 3.1 without prior approval and written agreement of the Parties.

3.3 The Services shall be performed by CONTRACTOR to CITY's satisfaction, and CITY shall not be liable for any payment under this AGREEMENT for Services which are unsatisfactory or which have not been approved by CITY. Payment for the Services shall not be paid until required reports, data, and documentation have been received and approved by CITY, as determined by the Grants Administrator as CITY's approval official. CITY shall not be obligated or liable under this AGREEMENT to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

3.4 CONTRACTOR understands and agrees that the source of funding for this AGREEMENT is federal funds received from HUD. All payments to CONTRACTOR must be rendered on an actual cost incurred, reimbursable basis in conformance with 2 C.F.R. Part 200 and applicable HUD regulations. Therefore, requests for advances, prepayments and/or retainer fees are ineligible for payment and cannot be honored or processed by CITY. CONTRACTOR acknowledges and agrees that this AGREEMENT in no way obligates CITY's general fund monies or any other monies or credits of CITY.

3.5 It is expressly understood and agreed CONTRACTOR that CITY's obligations under this AGREEMENT are contingent upon the actual receipt of adequate funds to meet CITY's liabilities hereunder. Should CITY not receive sufficient funds to make payments pursuant to this AGREEMENT or should the awarded Grant Funds be reduced, CITY shall notify CONTRACTOR in writing within a reasonable time after such fact has been determined and CITY may, at its sole option, either terminate this AGREEMENT pursuant to Article VII or reduce the Services and consideration accordingly. For the first year of this AGREEMENT, CITY has allocated up to **SIXTY THOUSAND AND 00/100 DOLLARS (\$60,000.00)**. The amount of funding allocated each year will be determined by CITY, in its discretion, based on its estimate of the potential need to utilize CONTRACTOR to perform the Services for the upcoming year and may be adjusted at any time based on anticipated needs of CITY.

3.6 Except for the compensation earned by providing Services at the rates set forth in the Price Schedule, CONTRACTOR is prohibited from charging any fee to, or soliciting donations from, any person or entity in connection with the Services.

ARTICLE IV BILLING

4.1 CONTRACTOR shall submit an invoice to the City within thirty (30) days of completion of each project or at such intervals as CITY may direct in order to timely monitor and expend the funds. No additional fees or expenses of CONTRACTOR shall be charged for the submission of or responding to billing matters.

4.2 Upon termination of this AGREEMENT, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, HUD, or any other federal agency, CONTRACTOR shall refund such amount to CITY within ten (10) business days of CITY's written request specifying the amount disallowed or disapproved.

ARTICLE V REPRESENTATIONS, WARRANTIES, AND COVENANTS OF CONTRACTOR

5.1 In addition to the representations and warranties set forth elsewhere in this AGREEMENT, CONTRACTOR represents and warrants to CITY that:

- (A) CONTRACTOR has the full right, power and authority to enter into this AGREEMENT, to grant the rights and licenses granted hereunder, and to perform CONTRACTOR's obligations hereunder;
- (B) When executed and delivered by CONTRACTOR, this AGREEMENT will constitute a legal, valid and binding obligation of CONTRACTOR, enforceable against CONTRACTOR in accordance with its terms; and
- (C) CONTRACTOR and any other person designated by CONTRACTOR to provide the Services have the requisite training, license and/or certification to provide the Services and meet all competence standards promulgated by all authoritative bodies applicable to the Services.

5.2 In addition to the covenants set forth elsewhere in this AGREEMENT, CONTRACTOR covenants to CITY that:

- (A) CONTRACTOR shall provide and perform the Services in compliance with all applicable federal, state, local laws, rules and regulations;
- (B) CONTRACTOR shall perform the Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of CONTRACTOR's profession;
- (C) CONTRACTOR shall coordinate with CITY to perform the Services and shall meet with CITY at any reasonable time specified by CITY to review the progress of CONTRACTOR's Services under this AGREEMENT;

- (D) CONTRACTOR shall not unlawfully discriminate in the solicitation, selection, hiring or treatment of subcontractors, vendors, suppliers, or customers, nor shall CONTRACTOR retaliate against any person for reporting instances of such discrimination; and
- (E) CONTRACTOR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities, if any.

**ARTICLE VI
COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

6.1 CONTRACTOR understands that the Grant Funds provided to it pursuant to this AGREEMENT are funds which have been made available to CITY by the federal government under CDBG. Consequently, CONTRACTOR agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the Grant Funds received by CONTRACTOR hereunder as directed by CITY or as required in this AGREEMENT. All of the Services performed under this AGREEMENT by CONTRACTOR shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, and rules and regulations of CITY, and without narrowing the laws and regulations with which CONTRACTOR must comply, CONTRACTOR acknowledges, understands, and agrees that:

- (A) CONTRACTOR 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, and understands and agrees to comply with the following nondiscrimination, minimum wage and equal opportunity provisions: (i) CITY's Non-Discrimination Policy contained in Chapter 2, Article X of CITY's Code; (ii) Title VII of the Civil Rights Act of 1964, as amended; (iii) Section 504 of the Rehabilitation Act of 1973, as amended; (iv) Age Discrimination Act of 1975, as amended; (v) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1688); (vi) Fair Labor Standards Act of 1938, as amended; (vii) Equal Pay Act of 1963, P.L. 88-38; (viii) Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*; and (ix) all applicable regulations implementing the preceding laws.
- (B) CONTRACTOR certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the CONTRACTOR to suspension of payments, termination of this AGREEMENT, and debarment and suspension actions.
- (C) CONTRACTOR agrees to comply with the provisions 24 C.F.R. § 570.611, *Conflict of interest*, which provides that no persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. CONTRACTOR agrees that said conflict of interest provision extends to HOME and NSP activities that may be the subject of the Services rendered hereunder;

- (D) CONTRACTOR agrees to comply with the provisions of 2 C.F.R. § 200.321, *Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms*, by taking all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, with such affirmative steps to include:
- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in clauses (i) through (v) of this Section 6.1(E).
- (E) CONTRACTOR agrees to comply with the applicable provisions of 2 C.F.R. § 200.326, *Appendix II for Non-Federal Entity Contracts under Federal Awards*, said applicable provisions being incorporated herein to the extent not set forth elsewhere in this AGREEMENT, including the following subparts of said regulation:
- (i) A contract may not be awarded to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM) in accordance with the guidelines a 2 C.F.R. 180 that implement Executive Orders 12549 and 12689, *Debarment and Suspension*; and
 - (ii) 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of items designated in Subpart B of 40 C.F.R. Part 247.
- (F) CONTRACTOR agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this AGREEMENT as they may be promulgated.

6.2 CONTRACTOR understands that legal requirements in Section 6.1 are summaries, and as such are in no way are meant to constitute a complete compilation of all duties imposed upon CONTRACTOR by law or administrative ruling, or to narrow the standards which CONTRACTOR must follow. CONTRACTOR must at all times remain in compliance with the requirements set out in Section

6.1 above, and shall observe and comply with all other applicable legal requirements.

ARTICLE VII TERMINATION

7.1 For purposes of this AGREEMENT, "*termination*" of this AGREEMENT shall mean termination by expiration of the Term or earlier termination pursuant to any of the provisions hereof.

7.2 Subject to a cure period, if any, that CITY, in its sole discretion, deems appropriate, if at all, for CONTRACTOR to complete corrective action, CITY may terminate this AGREEMENT, in whole or in part, for any of the following reasons effective as of the date provided in CITY's written notice to CONTRACTOR:

- (A) Neglect or failure by CONTRACTOR to perform or observe any of the terms, conditions, covenants, or guarantees of this AGREEMENT or of any amendment hereto between CITY and CONTRACTOR;
- (B) Violation by CONTRACTOR of any rule, regulation, or law to which CONTRACTOR is bound;
- (C) Initiation of an investigation, claim or charge by any local, state or federal agency (e.g., San Antonio Police Department, Texas Department of Public Safety, or Internal Revenue Service) against CONTRACTOR;
- (D) Sale, transfer, pledge, conveyance or assignment of this AGREEMENT by CONTRACTOR without written prior approval of CITY;
- (E) Bankruptcy or selling substantially all of CONTRACTOR's assets; and/or
- (F) Performing the Services unsatisfactorily as determined by the Grants Administrator.

7.3 If CITY terminates this AGREEMENT pursuant to Section 7.2, CITY may contract with another party to complete the Services, and CITY shall have the right to offset the cost of such new agreement against CONTRACTOR's future or unpaid invoice(s), subject to CITY's duty to mitigate its losses to the extent required by law. CONTRACTOR shall be entitled to receive just and equitable compensation for any Services satisfactorily completed prior to such termination date, with such compensation to be offset by any amounts due and owing from CONTRACTOR to CITY. The question of satisfactory completion of such Services shall be determined by CITY alone, and its decision shall be final.

7.4 Notwithstanding anything to the contrary in this AGREEMENT, if CITY determines that continuation of this AGREEMENT is not in CITY's interest, CITY may immediately terminate this AGREEMENT for convenience at any time, in whole or in part, by providing written notice to CONTRACTOR. Additionally, if any state or federal law or regulation is enacted or promulgated that 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.

7.5 Upon receipt of notice to terminate, CONTRACTOR shall immediately cease all performance under this AGREEMENT to the extent set forth in CITY's notice of termination and shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the

performance of this AGREEMENT as terminated. To this effect, CITY shall not be liable to CONTRACTOR or CONTRACTOR's creditors for any expenses, encumbrances, or obligations whatsoever incurred after the effective date of termination. Upon termination of this AGREEMENT, CONTRACTOR shall affect an orderly transfer to CITY or to such person(s) or firm(s) as CITY may designate, at no additional cost to CITY, of 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 CONTRACTOR or provided to CONTRACTOR hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by CONTRACTOR in accordance with Article VIII. Any transfer of records shall be completed within thirty (30) days of a written request by CITY and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such documents, if requested.

7.6 Within thirty (30) days after the termination of this AGREEMENT, CONTRACTOR shall submit to CITY its claims, in detail, for payment owed by CITY for the Services through the effective date of termination. Failure by CONTRACTOR to submit its claims within such thirty (30) day period shall negate any liability on the part of CITY and constitute a waiver by CONTRACTOR of any and all right or claims to collect payment that CONTRACTOR may rightfully be otherwise entitled to for the Services under this AGREEMENT. Upon final payment to CONTRACTOR, CITY shall be relieved of any further obligations or liabilities to CONTRACTOR.

7.7 In no event shall CITY's termination of his AGREEMENT 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.

7.8 Notwithstanding any other remedy contained herein or provided by law, CITY may delay, suspend, limit, or cancel funds, rights or privileges herein given CONTRACTOR for failure to comply with the terms and provisions of this AGREEMENT. Specifically, at the sole option of CITY, CONTRACTOR may be placed on probation during which time CITY may withhold payment in cases where it determines that CONTRACTOR is not in compliance with this AGREEMENT. CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT, and CITY may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to CITY.

ARTICLE VIII RECORDS RETENTION

8.1 CONTRACTOR agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this AGREEMENT. CONTRACTOR further agrees that (A) maintenance of said records shall be in compliance with all terms, provisions, and requirements of this AGREEMENT and with all applicable federal and state regulations establishing standards for financial management; and (B) CONTRACTOR's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

8.2 For a period of at least five (5) years after termination of this AGREEMENT, CONTRACTOR agrees to retain all books, records, documents; reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this AGREEMENT; *provided, however*, if any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

8.3 Nothing in this Article VIII shall be construed to relieve CONTRACTOR of (A) responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this AGREEMENT; and (B) fiscal accountability and liability pursuant to this AGREEMENT and any applicable rules, regulations, and laws.

8.4 CONTRACTOR agrees to include the substance of this Article VIII in all of its sub-contracts, if any, funded by this AGREEMENT.

ARTICLE IX ACCESSIBILITY OF RECORDS

9.1 At any reasonable time and as often as CITY may deem necessary, CONTRACTOR shall make all of its records available to CITY, HUD, and each of their authorized representatives, and shall permit CITY, HUD, or any of their authorized representatives to audit, examine, and make excerpts and/or copies of same. CONTRACTOR's records shall include, but shall not be limited to, the following: contracts, payroll, invoices, program income, and program beneficiaries. All such records must continue to be available for inspection and audit for a period of five (5) years after the termination date hereof or until all audits are complete and findings on all claims have been finally resolved, whichever is the greater period of time.

9.2 CONTRACTOR agrees that during the Term, any duly authorized representative of CITY may conduct on-site inspections at reasonable times, and interview personnel and clients, for the purpose of evaluating and monitoring CONTRACTOR's operations for compliance with this AGREEMENT.

9.3 Copies of any and all fiscal, management, or audit reports by any of CONTRACTOR's funding or regulatory bodies shall be submitted to CITY within ten (10) days of receipt thereof by CONTRACTOR.

ARTICLE X INSURANCE REQUIREMENTS

10.1 CONTRACTOR agrees to comply with the following insurance provisions:

- (A) 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 Grants Administrator or her designee, which shall be clearly labeled "*On-Call Real Estate Services*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate and endorsements have been received and approved by CITY. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- (B) CITY reserves the right to review the insurance requirements of this Article X during the effective period of this AGREEMENT and any extension hereof and to modify insurance

coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. In no instance will CITY allow modification whereby CITY may incur increased risk.

- (C) CONTRACTOR's financial integrity is of interest to CITY; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by 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 amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to property rented	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 (Claims-made basis) to be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in the professional services.

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

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

City of San Antonio
Attn: Division of Grants Monitoring and Administration
P.O. Box 839966
San Antonio, Texas 78283-3966

- (F) CONTRACTOR agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- (i) Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
 - (ii) Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy;
 - (iii) Workers' compensation and employers' liability, general liability and automotive liability policies will provide a waiver of subrogation in favor of CITY; and
 - (iv) Provide advance written notice directly to CITY of any suspension, or non-renewal in coverage, and not less than ten (10) days advance notice for nonpayment of premium.
- (G) Within five (5) 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 AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
- (H) In addition to any other remedies 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, CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.
- (I) Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this AGREEMENT.

- (J) CONTRACTOR understands and agrees that its insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CITY for liability arising out of the activities under this AGREEMENT.
- (K) CONTRACTOR understands and agrees 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 CITY shall be limited to insurance coverage provided.
- (L) CONTRACTOR and any subcontractors are responsible for all damage to their own equipment and/or property.

10.2 In no event will the City be required to maintain any insurance coverage for CONTRACTOR.

ARTICLE XI INDEMNITY

11.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISIONS:

- (A) **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of 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 CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this Section 11.1 shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTRACTOR agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.**

11.2 The indemnity provisions of this Article XI are solely for the benefit of the Parties 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 twenty-four (24) hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT 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 Article XI.

11.3 CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by City in writing. CONTRACTOR shall retain CITY-approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this AGREEMENT. If CONTRACTOR fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 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.

ARTICLE XII CONFLICTS OF INTEREST.

12.1 CONTRACTOR acknowledges that it is informed that CITY's Charter and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency, such as CITY owned utilities. An officer or employee has a "*prohibited financial interest*" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A CITY officer or employee; his/her parent, child or spouse; a business entity in which the officer or employee, or his/her parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

12.2 CONTRACTOR warrants and certifies, and this AGREEMENT is made in reliance thereon, that no CITY officer or employee nor any spouse, parent, child sibling or first-degree relative of a CITY officer or employee owns ten percent (10%) or more of the voting stock or shares of CONTRACTOR, or ten percent (10%) or more of the fair market value of CONTRACTOR. CONTRACTOR further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

ARTICLE XIII POLITICAL ACTIVITIES

13.1 CONTRACTOR agrees that none of the Grant Funds 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 providing the Services under this AGREEMENT be assigned to work for or on behalf of any partisan or non-partisan political activity. CONTRACTOR agrees that no Grant 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. The prohibitions set forth 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; or
- (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.

13.2 To ensure that the above policies are complied with, CONTRACTOR shall provide every member of its personnel paid with Grant Funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to CITY. CONTRACTOR shall list the name and number of a contact person from CITY on the statement that CONTRACTOR's personnel can call to report said violations.

13.3 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to CONTRACTOR under this AGREEMENT may, at CITY's discretion, be withheld until the situation is resolved.

13.4 This Article XIII shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, CONTRACTOR and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with CITY funds.

ARTICLE XIV ADVERSARIAL PROCEEDINGS

14.1 Under no circumstances shall CONTRACTOR use the Grant Funds received under this AGREEMENT to, either directly or indirectly, pay costs or attorney fees incurred in any adversarial proceeding against the CITY or any other public entity. During the Term of this AGREEMENT, if CONTRACTOR files and/or pursues an adversarial proceeding against the CITY, then CITY may immediately terminate this AGREEMENT and all access to the funding provided for hereunder. CONTRACTOR, at the CITY'S option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against CITY remains unresolved. For purposes of this Section 14.1, "***adversarial proceeding***" includes any cause of action filed by CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

ARTICLE XV

RELIGIOUS ACTIVITIES

15.1 CONTRACTOR agrees that none of the Services rendered hereunder shall involve, and no portion of the Grant Funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall the Services rendered or Grant Funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

ARTICLE XVI CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND PROPOSED DEBARMENT

16.1 CONTRACTOR certifies, and CITY relies thereon in execution of this AGREEMENT, that neither CONTRACTOR nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any federal governmental agency or department. "*Principals*," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

16.2 CONTRACTOR shall provide immediate written notice to CITY if at any time during the Term of this AGREEMENT, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

16.3 CONTRACTOR's certification is a material representation of fact upon which City has relied in entering into this AGREEMENT. Should CITY determine, at any time during this AGREEMENT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, City may terminate this AGREEMENT in accordance with the termination provisions of Article VII.

ARTICLE XVII INDEPENDENT CONTRACTOR

17.1 CONTRACTOR is an independent contractor and is not an employee, servant, agent, partner or joint venturer of CITY. CITY is interested only in the results achieved by the Services of CONTRACTOR, and the manner of legally achieving those results is the responsibility of CONTRACTOR. 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 consultants. The doctrine of respondeat superior shall not apply as between CITY and CONTRACTOR, its officers, agents, employees, contractors, subcontractors, and consultants. The Parties understand and agree that 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 CONTRACTOR under this AGREEMENT and that CONTRACTOR has no authority to bind CITY.

17.2 CITY is not responsible for deducting, and shall not deduct, from payments to CONTRACTOR any amounts for withholding tax, FICA, insurance or other similar item relating to CONTRACTOR or CONTRACTOR's employees. Neither CONTRACTOR nor its employees shall be entitled to receive any benefits which employees of CITY are entitled to receive and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or social security on account of their work for CITY.

**ARTICLE XVIII
PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

18.1 Texas Government Code §2271.002 provides that a governmental entity may not enter a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (A) does not boycott Israel; and (B) will not boycott Israel during the term of the contract. This section only applies to a contract that: (A) is between a governmental entity and a company with 10 or more full-time employees; and (B) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

18.2 "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.

18.3 "Company" means a for-profit 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. This term does not include a sole proprietorship.

18.4 By executing this AGREEMENT, CONTRACTOR hereby verifies that it does not boycott Israel, and will not boycott Israel during the Term of the AGREEMENT including all Renewal Periods. CITY hereby relies on CONTRACTOR's verification. If found to be false, CITY may terminate the contract for material breach.

**ARTICLE XIX
CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR
FOREIGN TERRORIST ORGANIZATIONS PROHIBITED**

19.1 Texas Government Code §2252.152 provides that a governmental entity may not enter 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 said list during its contract with CITY, CITY may terminate the AGREEMENT for material breach.

**ARTICLE XX
INTELLECTUAL PROPERTY**

20.1 CONTRACTOR shall pay all royalties and licensing fees for intellectual property used by CONTRACTOR to perform the Services provided hereunder. CONTRACTOR shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the performance of Services. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONTRACTOR has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the CITY.

20.2 Upon receipt of notification that a third-party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONTRACTOR will immediately either obtain, at CONTRACTOR's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs and hardware, as the case may be, or, alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated. Additionally, CONTRACTOR shall reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

20.3 CONTRACTOR further agrees to assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this AGREEMENT, assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the CITY against any monetary damages and/or costs awarded in such suit; Provided that CONTRACTOR is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONTRACTOR agrees to consult with the City Attorney of the CITY during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the CITY, the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONTRACTOR or as modified without the permission of CONTRACTOR, so long as such modification is not the source of the infringement claim, the liability claimed shall not have arisen out of the CITY's negligent act or omission, and the CITY promptly provide CONTRACTOR with written notice within 15 days following the formal assertion of any claim with respect to which the CITY asserts that CONTRACTOR assumes responsibility under this section.

ARTICLE XXI AMENDMENT

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

21.2 Any amendment to this AGREEMENT that increases the amount of compensation paid to CONTRACTOR, or which changes the scope of services provided by CONTRACTOR, shall automatically include, and said amendment hereby incorporates, all additional, applicable federal, state and local laws, ordinances, regulations, and requirements including the contract provisions set forth in 2 C.F.R. § 200.326, *Appendix II for Non-Federal Entity Contracts under Federal Awards*, that are not otherwise set forth elsewhere in this AGREEMENT.

ARTICLE XXII ASSIGNMENT

22.1 CONTRACTOR shall not assign nor transfer CONTRACTOR's interest in this AGREEMENT or any portion thereof without the written consent of CITY. Any attempt to transfer, pledge or otherwise assign shall be void *ab initio* and shall confer no rights upon any third person or party.

ARTICLE XXIII

SUB-CONTRACTING

23.1 None of the Services covered by this AGREEMENT shall be sub-contracted without the prior written consent of CITY. Compliance by subcontractors with this AGREEMENT shall be the responsibility of CONTRACTOR. CONTRACTOR agrees that payment for services of any subcontractor shall be submitted through CONTRACTOR, and CONTRACTOR shall be responsible for all payments to subcontractors. It is further agreed by CONTRACTOR that the CITY has the authority to monitor, audit, examine, and make copies and transcripts of all subcontracts, as often as deemed appropriate by the CITY.

ARTICLE XXIV NOTICES

24.1 All notices, demand, requests, and other communications hereunder shall be in writing and shall be deemed to have been given: (A) when delivered by hand (with written confirmation of receipt); (B) one (1) business day after being sent by reputable private courier service for next business day delivery (receipt requested); or (C) two (2) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. All notices, demands, requests or other communications to be sent to a Party must be sent to or made at the address set forth below or at such other address as such Party may specify by providing at least ten (10) days' prior written notice thereof to the other Party in accordance with this Section 21.1. A Party's rejection or other refusal of a notice, demand or request submitted by the other Party, or the inability to deliver such communications because of changed address of which no notice was given as herein required, shall be deemed to be receipt of the notice, demand or request sent.

If to CITY:

City of San Antonio
Neighborhood and Housing Services Department
Attn; Grants Administrator
1400 South Flores
San Antonio, Texas 78204

With a copy to:

City of San Antonio
Attn: CDBG Attorney
City Attorney's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

If to CONTRACTOR:

HNX Enterprises LLC
Attn: George Mercado
215 Wesley Place
San Antonio, Texas 78209

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

ARTICLE XXV GOVERNING LAW; VENUE

25.1 THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT OR ADJUDICATE ANY DISPUTE ARISING OUT OF THIS AGREEMENT SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION IN SAN ANTONIO, BEXAR COUNTY, TEXAS. VENUE AND JURISDICTION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

**ARTICLE XXVI
PARTIES BOUND**

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

**ARTICLE XXVII
INTERPRETATION**

27.1 When a reference is made in this AGREEMENT to an Article, Section, or Exhibit such reference will be to an Article, Section, or Exhibit of this AGREEMENT unless otherwise indicated. When a reference is made to this AGREEMENT in this AGREEMENT, such reference will be to this AGREEMENT, as may be amended from time to time in accordance with Article XVIII. The headings in this AGREEMENT are for reference only and shall not affect the interpretation of this AGREEMENT. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa. The term “*days*” when used herein shall mean calendar days. The term “*business day*” when used herein shall mean that part of any given day from Monday through Friday excluding those scheduled holidays officially adopted and approved by the City Council for employees of CITY. In the event that any disagreement or dispute should arise between the Parties pertaining to the interpretation or meaning of any part of this AGREEMENT or its governing rules, regulations, laws, codes, or ordinances, the Grants Administrator, as representative of CITY, the Party ultimately responsible for all matters of compliance with HUD rules and regulations, shall have the final authority to render or secure an interpretation.

**ARTICLE XXVIII
SEVERABILITY**

28.1 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 CITY’s Charter, Code, or ordinances, then and in that event it is the intention of the Parties 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 that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal or unenforceable, there be added as a part of this AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

**ARTICLE XXIX
ENTIRE AGREEMENT**

29.1 This AGREEMENT constitutes the entire and integrated contract between the Parties and contains all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

**ARTICLE XXX
WAIVER**

30.1 No waiver by CITY of a breach of any of the terms, conditions, covenants, or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one (1) 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.

**ARTICLE XXXI
OWNERSHIP OF DOCUMENTS**

31.1 CONTRACTOR acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, CONTRACTOR agrees that no such local government records produced by or on the behalf of CONTRACTOR pursuant to this Agreement shall be the subject of any copyright or proprietary claim by CONTRACTOR. CONTRACTOR acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this AGREEMENT, shall belong to and be the property of CITY and shall be made available to CITY at any time. CONTRACTOR further agrees to turn over to CITY all such records upon termination of this AGREEMENT. CONTRACTOR agrees that it shall not, under any circumstances, release any records created during the course of performance of the AGREEMENT to any entity without the written permission of CITY, unless required to do so by a court of competent jurisdiction.

**ARTICLE XXXII
COUNTERPARTS**

32.1 This AGREEMENT may be executed in any number of multiple counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. Each such counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or other electronic transmission of any signed original document or retransmission of any signed facsimile or other electronic transmission will be deemed the same as delivery of an original.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT on the dates shown below to be effective February 11, 2021 (the "**Effective Date**").

CITY OF SAN ANTONIO,
a Texas municipal corporation

HNX ENTERPRISES LLC
a Texas limited liability company

By: _____
EDWARD GONZALES
Assistant Director,
Neighborhood & Housing Services Dept.
Date: _____

By: _____
GEORGE MERCADO
Owner / Member
Date: _____

APPROVED AS TO FORM:

By: _____
Scott Zimmerer
Assistant City Attorney

ATTACHMENTS:

Exhibit "A" – Scope of Service

Exhibit "B" – Price Schedule