

**CITY OF SAN ANTONIO
SHORT TERM LICENSE AGREEMENT FOR RENTAL OF
CARVER COMMUNITY CULTURAL CENTER**

NO. 00000__
FILE #

This License Agreement ("LICENSE"), dated this _____ day of _____, _____, is made and entered into by and between the City of San Antonio ("CITY") a municipal corporation of the State of Texas, acting by and through its Director of the Convention & Sports Facilities Department or designee ("DIRECTOR") and _____ ("LICENSEE"), for the following express purposes and conditions, all of which the LICENSEE hereby covenants and agrees with CITY to keep and perform.

WITNESSETH:

WHEREAS, CITY is the owner and operator of a building located at 226 N. Hackberry and a building located at 226 N. Hackberry, building number 6 known as the Little Carver Civic Center (both buildings are collectively known as the "Carver Community Cultural Center"); and

WHEREAS, LICENSEE and CITY desire to enter into an agreement specifying the terms and conditions under which LICENSEE will use a specified area of the Carver Community Cultural Center for presentation of the Event, as defined below, and all related activities;

NOW THEREFORE, for and in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

I. DEFINITIONS

- 1.1 Carver means the two buildings collectively known as Carver Community Cultural Center, in San Antonio, Texas, which are located at 226 N. Hackberry and building number 6 located at 226 N. Hackberry (the Little Carver Civic Center).
- 1.2 CITY means the City of San Antonio, a Texas municipal corporation.
- 1.3 DIRECTOR means the Director of the Department of Convention & Sports Facilities.
- 1.4 Egress means the exit of the Carver of people attending the Event or the moving out of the Event.
- 1.5 Event means the _____ and its related activities as specified herein and in any attachments hereto.
- 1.6 Ingress means the entry of attendees or the moving in of the Event.

II. SCOPE

- 2.1 The Event shall be the _____ and shall include all the related activities defined herein and in any attachments hereto. LICENSEE understands that the Event shall include only the activities outlined and that LICENSEE must receive the prior written approval of the DIRECTOR, or his or her designee to make any changes to the Event activities. If changes are made to the Event activities without prior approval of the DIRECTOR, the CITY, at its option, shall have the right to terminate this LICENSE and the LICENSEE shall forfeit, as liquidated damages, the security deposit required by Section 4.4.

III. TERM

- 3.1 That CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by LICENSEE, does hereby agree to furnish certain space located at the _____, City of San Antonio, Bexar County, Texas, ("LICENSED PREMISES") and LICENSEE agrees as consideration hereof and as payment for the right herein granted to use the LICENSED PREMISES to pay CITY the sums set forth in Section 4.1.
- 3.2 The Term shall commence on _____ (the "Commencement Date") no sooner than _____ .m. and end on _____ (the "Termination Date") no later than _____ .m.. The Term shall be the entire period of LICENSEE'S use and shall include the Event Day or Days and the days for Ingress and Egress. The Days of the Events are _____.

IV. PAYMENT

- 4.1 In consideration for the license to use the LICENSED PREMISES as provided for in this LICENSE Agreement, LICENSEE shall pay CITY the fees set forth below.

License Fee (Rent):	\$ _____
Box Office fee:	\$ _____
Technical fees:	\$ _____
Equipment Rental:	\$ _____
Clean up:	\$ _____
Security Deposit:	\$ <u>200.00</u>
Additional Services:	\$ _____
(per Section 5.2)	
Other:	\$ _____
Total:	\$ _____

- 4.2 LICENSEE agrees to pay the total amount provided in Section 4.1 above at the time this LICENSE is executed and submitted to CITY, but by no later than 10 business days of the Commencement Date. Any fees due in connection with costs that are unforeseen at the time the LICENSE is submitted, or owed pursuant to any provision herein, including any balance owed by LICENSEE, are due to the CITY on the final day of the Event. Interest at the highest rate allowed by Texas Law will be assessed against any unpaid balance after 30 days from the due date.
- 4.3 The fees above are based on rates approved by CITY Ordinance # .
- 4.4 LICENSEE agrees that LICENSEE's security deposit shall be credited towards the final balance owed by the LICENSEE to the CITY. Said security deposit or portion thereof will only be refunded (unless otherwise forfeited under Section 2.1) (i) in the event that funds are available after crediting the security deposit toward the balance of unpaid rent, fees or the cost of damages caused by LICENSEE and owed by LICENSEE to the CITY, or (ii) in the event that this LICENSE terminates pursuant to Section 11.2.

V. PERSONNEL AND SERVICES

- 5.1 LICENSEE shall employ sufficient qualified personnel as may be required for the proper use and occupancy of the Carver including, but not limited to ticket takers, ushers, registration personnel, paramedics, spotlight operators, sound system technicians, electricians, sale of concessions (if concession rights are granted by CITY to LICENSEE) and any other personnel necessary for the handling of freight, decorations, scenery, or other property of LICENSEE. LICENSEE agrees that each person employed by LICENSEE to provide services in the Carver will at all times maintain a neat and clean appearance and conduct himself/herself in a polite and professional manner. LICENSEE agrees to replace any such employee failing to do so upon notice by DIRECTOR.
- 5.2 Should LICENSEE require additional services, accommodations or materials (collectively referred to as "Additional Services") other than those ordinarily provided for the LICENSED PREMISES, which the DIRECTOR or his/her designee agrees could be provided by CITY, such as special set-ups or special labor requests, and LICENSEE desires CITY to provide those services, LICENSEE shall make a written request for said services no later than 60 days prior to the Commencement Date. LICENSEE agrees to pay any and all sums which may be due CITY for said Additional Services in accordance with the terms of this LICENSE.
- 5.3 SECURITY PERSONNEL. As a condition of the granting of this LICENSE, LICENSEE agrees to pay for the provision of adequate security that may be necessary during the Term. LICENSEE shall make security arrangements with security personnel who have obtained a minimum Basic Peace Officer Certificate from the Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE). CITY, in its sole and absolute discretion, shall determine the number of security personnel that may be necessary for LICENSEE's Event depending on the anticipated number of attendees and invited guests and the nature of the Event.

VI. INSURANCE REQUIREMENTS

- 6.1 Prior to the commencement of any work under this LICENSE, LICENSEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City of San Antonio, Attn: Booking and Services Coordinator, Carver Community Cultural Center, which shall be clearly labeled “*insert name of project/contract*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this LICENSE until such certificate and endorsements have been received and approved by the City’s Department of Community Initiatives. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- 6.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this LICENSE 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 LICENSE. In no instance will City allow modification whereupon City may incur increased risk.
- 6.3 A LICENSEE’s financial integrity is of interest to the City; therefore, subject to LICENSEE’s right to maintain reasonable deductibles in such amounts as are approved by the City, LICENSEE shall obtain and maintain in full force and effect for the duration of this LICENSE, and any extension hereof, at LICENSEE’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. Liquor Liability*	\$1,000,000 per occurrence

* if alcohol is sold on premises	
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- 6.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LICENSEE 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. LICENSEE shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

Carver Community Cultural Center
ATTN: Booking and Services Coordinator
226 North Hackberry
San Antonio, TX 78202-2853

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as an additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

- 6.8 Nothing herein contained shall be construed as limiting in any way the extent to which LICENSEE may be held responsible for payments of damages to persons or property resulting from LICENSEE's or its subcontractors' performance of the work covered under this LICENSE.
- 6.9 It is agreed that LICENSEE'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 LICENSE.
- 6.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this LICENSE.
- 6.11 LICENSEE and any Subcontractors are responsible for all damage to their own equipment and/or property.

VII. INDEMNITY

7.1 **LICENSEE AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

LICENSEE 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 LICENSEE'S activities under this LICENSE, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this LICENSE. 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 LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE'S activities under this LICENSE.

- 7.2 **Defense Counsel** - CITY shall have the right to select or to approve defense counsel to be retained by LICENSEE in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. LICENSEE 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 LICENSEE fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and LICENSEE 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.
- 7.3 **Employee Litigation** – In any and all claims against any party indemnified hereunder by any employee of LICENSEE, 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 LICENSEE or any subcontractor under worker's compensation or other employee benefit acts.

VIII. COPYRIGHT INDEMNIFICATION

- 8.1 LICENSEE AGREES TO ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE FEDERAL COPYRIGHT LAW OF 1978 (17 U.S.C. 101, ET SEQ, as amended,) AND ANY REGULATIONS ISSUED THEREAFTER INCLUDING, BUT NOT LIMITED TO, THE ASSUMPTION OF ANY AND ALL RESPONSIBILITIES FOR PAYING ROYALTIES WHICH ARE DUE FOR THE USE OF COPYRIGHTED WORKS IN LICENSEE'S PERFORMANCES OR EXHIBITIONS TO THE COPYRIGHT OWNER, OR REPRESENTATIVES OF SAID COPYRIGHT OWNER, AND LICENSEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES AND AGENTS, FOR ANY CLAIMS, LOSSES, EXPENSES OR DAMAGES GROWING OUT OF LICENSEE'S INFRINGEMENT OR VIOLATION OF THE COPYRIGHT LAW AND/OR REGULATIONS.

IX. LICENSEE PROPERTY

- 9.1 **REMOVAL OF INSTALLATIONS.** In the event platform, stagings or other structures are erected by LICENSEE or any of the exhibitors in any portion of the LICENSED PREMISES, the expense of such erection and removal shall be paid for by LICENSEE. and shall be subject to the terms and conditions of Section 9.2.
- 9.2 **PROPERTY OF LICENSEE.** All property of LICENSEE shall be removed from the LICENSED PREMISES prior to or upon expiration of the Term hereof. In the event that the property is not removed by the expiration of the Term, CITY is hereby authorized to remove all personal property of any and all kinds and description which may then be situated at the LICENSED PREMISES and to store, or dispose of, the same at the expense of LICENSEE. CITY shall not be liable for any damages to or loss of such personal property which may be sustained due to such removal or resulting from the place to which it may be removed. CITY is hereby expressly released from any and all claims for any damages of whatever kind or nature.
- 9.3 LICENSEE assumes all risk of damage to its property and/or the loss by theft or otherwise of any property of the LICENSEE, its employees, and/or its exhibitors, and no claim shall be made upon CITY for any such loss unless same is due to (i) the sole negligence of CITY or (ii) an intentional or willful tort committed by CITY as determined by a court of law. LICENSEE understands and agrees that the security that CITY engages is for the sole purpose of maintaining peace and order at the Carver and that said security is not responsible for protecting LICENSEE from theft or loss of its property or the property of its employees and/or its exhibitors. Therefore, if the LICENSEE wishes to protect its personal property and finds it necessary, LICENSEE may arrange for added security during the term of this LICENSE to protect property brought onto the grounds of the LICENSED PREMISES by LICENSEE, its employees, and/or its purveyors.

X. CITY PROPERTY; DAMAGES AND RESTRICTIONS

- 10.1 **CONTROL OF BUILDING.** In furnishing the LICENSED PREMISES, CITY reserves the right to control the management thereof, and to enforce all necessary and proper rules for the management and operation of said premises. CITY likewise reserves the right, through its DIRECTOR, his or her designee, CITY'S Police Officers or any other security personnel hired for that purpose, to eject any objectionable persons from the Carver, and upon the exercise of this authority, LICENSEE hereby waives any right and all claims for damages against CITY, or any of its agents, officials, or employees.
- 10.2 LICENSEE is responsible for the proper storage, collection and prompt return of CITY loaned devices to the CITY at the end of the Event and will be charged for any damage, loss or theft of devices, systems or associated equipment.
- 10.3 **ALTERATIONS AND DAMAGES.** LICENSEE will not cause or permit any nails or any other things to be driven into any portion of the Carver, nor cause or permit any changes, alterations, repairs, painting or staining of any part of the LICENSED PREMISES or furnishing or the equipment thereof, nor do or permit to be done anything

which will damage or change the finish or appearance of the Carver or the furnishings thereof. Tape or other adhesive materials may not be applied to walls or other surfaces of the LICENSED PREMISES without the prior approval of DIRECTOR or his/her designee. All products or balloons that could rise to the ceiling because of the product's physical properties are prohibited along with decorations or items that create a substantial risk of damage or excessive litter. If the LICENSED PREMISES, or any portion of said building, during the term of this LICENSE shall be damaged by the act, default or negligence of LICENSEE, or of LICENSEE'S agent, employees, patrons, guests, or any person admitted to the LICENSED PREMISES by LICENSEE, LICENSEE will pay CITY, upon demand, such sum as shall be necessary to restore the LICENSED PREMISES to its present condition. LICENSEE hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the LICENSED PREMISES, or to any portion of said building with the consent of LICENSEE'S employees or any person acting for or on behalf of LICENSEE. DIRECTOR or his/her designee, in his or her sole discretion shall determine whether any damage has been done, the amount of the damage, the reasonable cost of repairing it, and whether, under the terms of LICENSE, LICENSEE is to be held responsible.

- 10.4 LICENSEE hereby agrees that no activity, performance, exhibition or entertainment (attraction) shall be given or held or take place in the LICENSED PREMISES herein described which is potentially dangerous to the public or which is illegal, indecent, obscene, lewd, or immoral, and should any exhibition or performance or any part thereof be deemed by DIRECTOR to be dangerous, illegal, indecent, obscene, lewd, immoral or in any manner offensive to persons of ordinary sensibilities, then said DIRECTOR shall have the right to demand of LICENSEE that LICENSEE immediately, upon receipt of such notice, make appropriate modifications.
- 10.5 RESERVED RIGHTS RELATED TO CONCESSIONS AND NOVELTIES. CITY reserves the sole and exclusive right to sell or serve on, in or about the LICENSED PREMISES any alcoholic beverages, soft drinks, food, souvenirs, or other merchandise, or CITY may grant all concession rights to any party or parties designated by CITY, and NO FOOD OR BEVERAGE, WITH OR WITHOUT CHARGE, SAMPLES OR OTHERWISE, MAY BE SERVED OR DISTRIBUTED BY LICENSEE WITHOUT THE PRIOR WRITTEN CONSENT OF CITY. FURTHER, LICENSEE WILL NOT ALLOW ANY ATTENDEE TO BRING INTO THE LICENSED PREMISES ANY FOOD OR BEVERAGE.
- 10.6 TICKETS. The CITY has a contractual obligation to utilize Tickemaster for the sale of tickets related to Events at the Carver. If tickets are sold for the Event, then LICENSEE shall use Ticketmaster for such arrangements. LICENSEE shall not sell tickets through another professional agency, person or over the internet.
- 10.7 SEATING CAPACITY. In no event shall attendance at a meeting, dinner, concert, entertainment, exhibition or other event be in excess of the designated capacity for the LICENSED PREMISES or the Carver as determined by the City's Fire Marshall.

- 10.8 AISLES AND ALL ACCESS CLEAR. LICENSEE will permit no chairs, movable seats or other obstructions to be or remain in the entrances, exits, or passageways and will keep same clear at all times. No portion of the sidewalk, entries, passage, vestibules, halls, elevators, or access to public utilities of the Carver shall be obstructed by LICENSEE or used for any purpose other than for Ingress and Egress to and from the LICENSED PREMISES.

XI. CANCELLATION BY CITY; IMPOSSIBILITY OF PERFORMANCE

- 11.1 Violation by LICENSEE of any covenant, agreement or condition contained herein shall be cause for termination hereof by CITY. In such a case, LICENSEE shall, upon written notice from CITY, have ten days or until the Term of this LICENSE commences, whichever is less, to cure the violation or this LICENSE may be terminated by CITY. If the violation occurs during the term of this LICENSE, LICENSEE must cure the violation immediately or this LICENSE may be terminated by CITY. Should this LICENSE be terminated by CITY pursuant to this Section, LICENSEE forfeits any payment already made and is entitled to a refund only if the canceled space is re-booked to another party. In addition, CITY may likewise terminate this LICENSE if LICENSEE should, prior to the date of occupancy thereunder, violate any covenant, agreement, or condition in any other agreement which the LICENSEE might have for use of the Carver or should a court having jurisdiction over LICENSEE take its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act. Written notice of such cancellation will be given to LICENSEE by DIRECTOR or his/her designee. LICENSEE waives any and all claims for damages against CITY resulting from such cancellation.
- 11.2 IMPOSSIBILITY OF PERFORMANCE. If the (a) Carver or any portion thereof should be destroyed or damaged by fire or other calamity so as to prevent the use of the LICENSED PREMISES for the purposes and during the periods specified in this LICENSE, or (b) if the use of the LICENSED PREMISES by LICENSEE shall be prevented by an act of God, strike, lockout, material or labor shortage, restrictions by any governmental authority, civil riot, flood, or any other cause beyond the control of CITY, then this LICENSE shall terminate. CITY shall not be liable or responsible to LICENSEE for any damages caused thereby and LICENSEE hereby waives any claim against CITY for damages by reason of such termination, except that any unearned portion of the rent due thereunder shall abate, or, if previously paid, shall be refunded by CITY to LICENSEE.

XII. MISCELLANEOUS

- 12.1 LICENSEE'S REPRESENTATIVE. A representative of LICENSEE approved by Director or his or her designee shall remain on the LICENSED PREMISES during the term hereof and until performers and the public have left the premises.

- 12.2 RELEASE OF SPACE. Should LICENSEE release all or any portion of the LICENSED PREMISES described herein, LICENSEE will forfeit all payment made on the released space, unless the released space is re-booked to another party. LICENSEE understands that CITY is under no obligation to re-book the LICENSED PREMISES for the account of LICENSEE.
- 12.3 RELOCATION. CITY reserves the right to relocate LICENSEE to an alternate space within the Carver which is suitable for the use of LICENSEE should such relocation become necessary. In the event of such relocation, this LICENSE shall continue in full force and effect with the new location substituted for the old location. CITY shall use its best efforts to avoid any unnecessary inconvenience to LICENSEE.
- 12.4 COMPLIANCE WITH LAW. LICENSEE shall not do, nor suffer to be done, anything on the LICENSED PREMISES, during the term of this LICENSE, in violation of the laws of the United States, the State of Texas, or any of the ordinances of CITY applicable to persons operating a temporary or transient business for selling and delivering goods, wares or merchandise in CITY, and issued through the office of the City Treasurer. Further, LICENSEE shall obey all rules and regulations of CITY for the government and management of the Carver, together with all rules and requirements of the police and fire departments of CITY, including but not limited to the Facilities Use Policies and Fees for the Carver which are attached hereto and incorporated herein for all purposes as Exhibit I. LICENSEE agrees that every employee, agent or invitee connected with the purpose for which the premises are licensed shall abide by, conform to and comply with all and any such rules, laws, and ordinances. If the attention of said LICENSEE is called to such violations, LICENSEE will immediately desist from and correct such violations.
- 12.5 TAX. If actual sales are made on the LICENSED PREMISES, LICENSEE must inform each seller of the applicable sales tax. This rate is subject to change and LICENSEE must check with the Local State Comptroller's Office (1(800) 252-8880) prior to the term of this LICENSE to ascertain the current rate. Additionally, LICENSEE is responsible for ensuring that each seller possesses a sales permit number prior to the start of the term of this LICENSE.
- 12.6 VENUE. This LICENSE will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this LICENSE shall be in Bexar County, Texas. This LICENSE is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.
- 12.7 ATTORNEY'S FEES. If CITY is required to file suit to collect any amount owed it under this LICENSE for LICENSEE'S use of the LICENSED PREMISES, CITY shall be entitled to collect reasonable attorney's fees.
- 12.8 NON-DISCRIMINATION. LICENSEE 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.

- 12.9 CITY shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition, or entertainment given or held on the LICENSED PREMISES. LICENSEE agrees to hold CITY harmless for dispensing of said articles not claimed within 24 hours after the end of the Event.
- 12.10 NON-WAIVER. No waiver by CITY of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.
- 12.11 SEVERABILITY. In case any one or more of the provisions contained in this LICENSE shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this LICENSE shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 12.12 NOTICES. Any notices required or appropriate under this LICENSE shall be given in writing to LICENSEE at the address shown below, and to City, c/o Carver Community Cultural Center, 226 N. Hackberry, San Antonio, TX 78202-2853.
- 12.13 HEADINGS. The paragraph headings contained herein are for convenience of reference and are not intended to define, extend, or limit any provisions of this LICENSE.
- 12.14 PERSONAL LICENSE. This LICENSE is personal to LICENSEE. It is nonassignable and any attempt to assign this LICENSE will terminate all rights and privileges herein granted.
- 12.15 ENTIRE AGREEMENT. This LICENSE contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all other agreements, oral or otherwise, regarding the subject matter of this LICENSE, none of which shall hereafter be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written or contained in The Carver Community Cultural Center Facilities Use Policies and Fees, which are attached hereto and incorporated herein as Attachment I for all purposes.
- 12.16 RECYCLING. The CITY encourages recycling and promotes a program towards that effort. LICENSEE is therefore encouraged to utilize the CITY's recycling services and receptacles to recycle office paper, aluminum cans, plastic, glass, cardboard, polyurethane foam, scrap metal, and pallets.
- 12.17 AUTHORITY. The signer of this LICENSE for LICENSEE hereby represents that he or she has full authority to execute this LICENSE on behalf of LICENSEE.

CITY OF SAN ANTONIO

BY: _____

Director, _____

Or Designee

LICENSEE

BY: _____

Authorized Agent

Address:

EXECUTED THIS DAY: _____

EXECUTED THIS DAY: _____

Attachment I – Facilities Use Policies and Fees

CARVER COMMUNITY CULTURAL CENTER FEE TABLE

DESCRIPTION	CHARGE	QUANTITY	CHARGE TO LICENSEE
LICENSE (IN ACCORDANCE WITH BUSINESS CLASSIFICATIONS BELOW)			
<u><i>Class I - Non-Profit Organization</i></u> (Non-Profit Organization is defined as an organization that is not intending to make a financial or monetary gain from the use of capital in a transaction or series of transactions. Examples: Includes IRS 501(c) 3 organization, Social, Civic, Neighborhood Association, government or Church sponsored events.)	Jo Long - \$200 for the 1 st 4 hrs., \$100 for subsequent 4 hrs. Little Carver - \$100 for the 1 st 4 hrs., \$50 for subsequent 4 hrs.		
<u><i>Class II - Non-Profit Organization</i></u> that is charging for admission, collecting donations, or conducting other fundraising as part of the event.	Jo Long - \$350 for the 1 st 4 hrs., \$200 for subsequent 4 hrs. Little Carver \$200 for the 1 st 4 hrs., \$100 for subsequent 4 hrs.		
<u><i>Class III - Profit-Making Organization or Individual</i></u> (Profit Organization is defined as benefiting, advancing, making a financial or monetary gain from the use of capital in a transaction or series of transaction)	Jo Long - \$350 for the 1 st 4 hrs., \$200 for subsequent 4 hrs. Little Carver-\$200 for the 1 st 4 hrs., \$100 for subsequent 4 hrs.		
<u><i>Class IV - City of San Antonio Depts. Sponsored Events</i></u> Mon. through Fri. – 7:45 a.m. to 4:30 p.m. excluding Holidays (Requires the signature of the Director of the City Department.)	No Charge		
LICENSE FEE FOR HOLDOVER OR LATE BOOKING			
Fee for events beyond 12:00 midnight (must be approved by The Director of Managing City Department for Carver or representative.)	\$50 per half hour		
Fee for events vacating venue after their contract agreement time frame (1-60 minutes and every hour there after)	\$100		
REHEARSAL			
1 st rehearsal day Mon – Fri during the hours of 7:45 a.m. to 4:30 p.m. (Limited to 4 hours)	No charge		
After 4:30 p.m. Mon – Fri or anytime on a weekend day	\$100 per 4 hr. period		

DESCRIPTION	CHARGE	QUANTITY	CHARGE TO LICENSEE
Additional rehearsals	License rates will apply for any additional rehearsal dates.		
SECURITY DEPOSIT			
For use of the Jo Long Theatre or the Little Carver Civic Center	\$200		
BOX OFFICE			
Fee for staffing the Box Office	\$50 per performance		
SECURITY PERSONNEL			
Required – necessary level determined by Carver Staff	Varies Fees Payable to Security Officers		
TECHNICAL FEES (All technical fees are subject to change in accordance with the International Alliance Theatrical Stage Employee regulations.)			
Weekday (Monday – Friday, 8:00 a.m. to 500 p.m.)	Technicians - \$20 per hr. up to 8 hrs., with a minimum charge for 4 hrs.		
Weekends and Holidays	\$26 per hr. up to 8 hrs., with a minimum charge for 4 hrs.		
Weekends, Holidays and Weekdays after 5:00 p.m.	After 5:00 p.m. on the same day and up to 12 hrs. - \$26 per hr. Over 12 hrs. on the same day - \$35 per hr. Between the hrs. of midnight and 7 a.m. - \$35 per hr.		
EQUIPMENT (NON-TECHNICAL)			
Marley Dance Floor	\$60 per day – off premises rental \$60 per Event – use at Carver		
Drum Kit	\$100 per day		
Risers	\$10 each per day		
Piano (9 ft. K. Kawai) (available only at the Jo Long Theatre)	\$100 per day		
Upright piano	\$75 per day		
Tables (8 ft. long, 6 ft. long, 8 ft. round)	\$0 - up to 3 tables; \$10 each – exceeding 3 \$10 each - if used to sell concessions or novelties		
LCD Projector	\$125 per event - large \$50 per event – small		
Microphones	\$10 each per event		

DESCRIPTION	CHARGE	QUANTITY	CHARGE TO LICENSEE
Follow Spot (does not include spot light operator)	\$50 each per day		

CUSTODIAL / CLEAN UP			
Jo Long Theatre	\$150.00 – dressing rooms		
	\$100.00 – no dressing rooms		
Little Carver Civic Center	\$100.00 – dressing rooms		
	\$50.00 – no dressing rooms		
If Licensee will serve food concessions	Additional \$100.00		
INSURANCE			
Tenant User Liability Insurance	Insurance can be purchased from the City of San Antonio Insurance premium is subject to change at the discretion of the City's Risk Manager.		
TOTAL FEE \$ _____			

APPROVED:

LICENSEE'S SIGNATURE

CARVER COMMUNITY CULTURAL CENTER FACILITIES USE POLICIES AND FEES

For purposes of these Facilities Use Policies and Fees, the terms “Carver Community Cultural Center” and “Carver” mean one or both of the buildings located at 226 N. Hackberry and a building located at 226 N. Hackberry, Building No. 6, known as the Little Carver Civic Center.

I. GENERAL

1. The Director of the Managing City Department or his/her representative shall have the option to refuse to enter into a License with anyone who, under prior license agreements, had not fulfilled the terms and provisions of such agreements or with anyone for a production that is inconsistent with or counter to the mission of the Carver. The mission statement is to “celebrate the diverse cultures of our world, nation and community, with emphasis on its African American heritage, by providing challenging artistic presentations, community outreach activities and educational programs.” The determination as to whether an activity is consistent with the mission of the Carver is at the sole discretion of the City.
2. An individual or organization that rents the Carver (“Licensee”) shall comply with all City of San Antonio Ordinances, including but not limited to the Sexually Oriented Business Ordinance and all other local, state, and federal laws.
3. Smoking is not prohibited in any Carver building.
4. The Carver Facilities Use Policies are subject to change with the approval of the Director of the Managing City Department.
5. The Director of Convention & Sports Facilities (CSF), or his or her designee may establish fees and charges for production rentals and services not specifically covered in this document when it is determined to be in the best interest of the City.
6. The Director of, CSF, or designee may lower or waive fees and charges for production rentals when it is determined to be in the best interest of the community.
7. Licensee agrees that the presence of Carver staff is mandatory at all times, including, but not limited to, move-ins and move-outs, rehearsals, technical set ups, rigging and the operations of in-house equipment, under the terms of the Short Term License Agreement (“License”) and these policies.

_____ **INITIAL**

II. RESERVATIONS and BOOKING

1. The Carver is available for rent daily beginning at 7:00 a.m. and ending 12:00 midnight when space is not being used for City sponsored programs at the Carver.
2. The Carver’s Booking and Services Coordinator is responsible for all reservations and contracting of events. Reservations must be made through the Carver at 226 North Hackberry, or by calling 207-7215 Monday through Friday, during regular office hours (7:45 a.m. to 4:30 p.m.), excluding holidays.

3. Reservations are taken on a first come, first served basis, provided an application form has been filed with the Booking and Services Coordinator. However, priority consideration will be given to activities most consistent with the mission statement of the Carver.
4. The Carver will hold a reservation / booking for up to five (5) business days (the “hold period”). All reservations / bookings will be considered tentative until the individual or organization submits an executed License (i.e., the Short Term License Agreement), a copy of Licensee’s Certificate of Insurance and any other permits or licenses (e.g., food, beverage, alcohol) and pays applicable fees to the Booking and Services Coordinator. Upon submission of all necessary documents and associated fees, the booking will be considered “confirmed.” If, within the five (5) day hold period, another individual or organization submits all necessary documents and associated fees during those five (5) days for the date being held, the hold will terminate.
5. Additionally, individuals and organizations that wish to book the Carver for events or activities (hereinafter collectively referred to as an “Activity” and “Activities,” as applicable) shall be subject to the Tier System rules as set forth below.
 - a. A proposed Activity shall be classified as a Tier 1* or Tier 2** Activity for the purposes of determining the length of a single booking and the number of bookings that may be made in a six month period.*** The classification of a proposed Activity as either Tier 1 or Tier 2 shall be within the sole discretion of the Carver’s Booking and Services Coordinator. The Carver reserves the right to re-classify an Activity following commencement or completion of the Activity if it is later determined that the purpose of the Activity was other than that which was contemplated or represented at the time of the booking.
 - b. An individual or organization shall book one or more Tier 1 Activities in accordance with the following rules:
 - i. A single booking may not exceed fourteen (14) consecutive days.
 - ii. The total number of days booked by an individual or organization shall not exceed twenty-eight (28) days per six month period.***
 - c. An individual or organization shall book one or more Tier 2 Activities in accordance with the following rules:
 - i. A single booking may not exceed six (6) consecutive days.
 - ii. The total number of days booked by an individual or organization shall not exceed six (6) days per six month period.***

* Tier 1 Activities: “Tier 1 Activities” are defined as those Activities that are most consistent with the Carver’s mission as set forth herein. They include, but are not limited to: (i) artistic performances, such as dance, vocal, musical presentations and visual arts; (ii) art instruction; (iii) recitals; (iv) talent shows; and (v) theatrical performances.

** Tier 2 Activities: “Tier 2 Activities” are defined as all Activities other than those that may be classified as Tier 1 Activities. They include, but are not limited to: (i) dinners; (ii) award ceremonies; (iii) lectures; (iv) trainings; (v) meetings; (vi) fundraisers; and (vii) other community activities.

*** A six month period is that period beginning on October 1st and ending on March 31st or that six month period beginning on April 1st and ending on September 30th during the City of San Antonio's Fiscal Year.

6. If Licensee cancels an Event date within one week of the Event, the City will consider Licensee's request for an alternate date; however, the City reserves the right to deny Licensee's request based upon the availability of the specific Carver venue, the necessary equipment and Carver staff. If the parties are unable to agree upon an alternate date, Licensee shall forfeit any pre-paid license fees.
7. No changes will be made to the Short Term License Agreement within 10 business days of the event commencement date.

_____ **INITIAL**

III. LICENSE FEES AND SECURITY DEPOSIT

1. The license fee is a fee for the use of the Carver. The license fee is non-refundable. Licensee agrees to pay the daily license rates as applicable to its respective **BUSINESS CLASSIFICATION** for use of space at the Carver. See "License" fees category in attached Fee Table for specific fees.
2. The license fee and all other fees associated with Licensee's use of the Carver are due upon execution and submission of the Short Term License Agreement to the City, but by no later than 10 business days of the event commencement date set forth in the license agreement. Any fees due in connection with costs that are unforeseen at the time the license agreement is submitted, or owed pursuant to any provision herein, including any balance owed by Licensee, are due to the City on the first day of Licensee's Event, payable by cash, money order or cashier's check.
3. License fees do not include the cost of special requirements such as house manager, lighting, sound, ushers, ticket seller, ticket takers, box office, stagehands, spotlight operators, permit fees, etc. See "Technician Fees" category in attached Fee Table for specific fees.
4. Rehearsals must be scheduled in advance with the Booking and Services Coordinator. Licensee will receive one free rehearsal day Mon – Fri during the hours of 7:45 a.m. to 4:30 p.m. (limited to 4 hours). After 4:30 p.m. Mon – Fri or anytime on a weekend day, one rehearsal will be charged at a rate of \$100 per 4 hour period. License rates will apply for any additional rehearsal dates. If Licensee requires technicians for rehearsal days, Licensee agrees to pay Technician Fees.
5. A fee of \$100 will be charged for exceeding the rental time indicated in the Short Term License Agreement to include load-in and load-out of all materials associated with the event.
6. A standard \$200 security deposit is required for the Jo Long Theatre and the Little Carver Civic Center for each use. This deposit is designed to protect both facilities in the event there is any damage to the equipment and/or facility. This deposit will be returned to the Licensee under certain circumstances as described in the License.

_____ **INITIAL**

IV. TICKETS AND FUNDRAISING

1. Licensee may sell tickets on the day of the event at the Carver. Tickets cannot be sold in

excess of posted seating capacity (650 for Jo Long Theatre and 150 for the Little Carver). In no event shall attendance to a meeting, dinner, concert, entertainment, exhibition or other event be in excess of the designated area capacity as determined by the City's Fire Marshall. Licensee agrees to pay any fee that might be assessed by the Fire Department as a result of violating this provision.

2. Licensee is responsible for the charge of an additional \$1 theatre preservation fee on every ticket sold or admission paid to an Event.
3. In order for Carver staff to sell tickets on behalf of Licensee on the day of the performance, a box office fee of \$50 for each performance is required.
4. Licensee is required to provide at least two of its own ushers to monitor admittance. Licensee is encouraged to use reserved seating when tickets are sold to the public.
5. If Licensee plans to approach local businesses, corporations or foundations to obtain support for its event, Licensee agrees to comply with the following guidelines in connection with advertising, ticket selling and fundraising:
 - Clearly state that Licensee is holding a community event at the Carver.
 - State that this event is not part of the Carver's regular season and is not sponsored by the Carver, Carver Development Board or the City of San Antonio.
 - Specify that support for the event will underwrite Licensee's production, not the Carver.
 - Licensee agrees that any and all advertising for Licensee's event, both in print and in electronic media, shall contain the following disclaimer: ***"This production is not a presentation of the Carver Community Cultural Center or the Carver Development Board."***
 - Licensee agrees that any and all advertising for Licensee's event, both in print and in electronic media, shall contain the following notice: ***"Tickets are available through Ticketmaster, Ticketmaster.com, the Alamodome and at the Carver Community Cultural Center Box Office."***
6. Licensee agrees that the City may terminate the License and cancel Licensee's Event if Licensee fails to comply with the guidelines related advertising, ticket selling and fundraising.

_____ **INITIAL**

V. *USE OF FOOD AND CONCESSIONS*

1. The City _____ will / _____ will not provide concessions. _____ **INITIAL**
2. Licensee _____ is / _____ is not authorized to provide food or beverages available to the public. _____ **INITIAL**
3. If Licensee is providing food or beverages to the public, Licensee agrees to secure a temporary food permit by calling the City's Food Sanitation Division at 207-8853 at least one week prior to event date. If Licensee is providing alcoholic beverages to the public, Licensee agrees to secure a license from the Texas Alcoholic Beverage Commission (TABC) at least one week prior to event date. Licensee agrees to provide a copy of said permit or license to the Booking and Services Coordinator at least one week prior to the event.

Licensee agrees to utilize only sellers/server who are certified by the TABC. The City reserves the right to prohibit the provision of food, non-alcoholic or alcoholic beverages if Licensee fails to provide evidence that Licensee has secured the necessary permit or license to the City prior to the event.

4. If Licensee provides food or beverages, Licensee agrees to provide its own ushers to monitor use of food or beverages in the theatre and agrees only to set up food service in the lobby or approved areas of theatre.
5. The Licensee agrees to rent the number of tables necessary for concessions or other use at a fee of \$10.00 per table per event. Licensee must provide coverings for all tables used. See "Equipment" fees category in attached Fee Table for specific fees.
6. Licensee will be assessed an additional cleaning fee when Licensee provides food in the building. See "Custodial / Cleanup" fees category in attached Fee Table for specific fees. Notwithstanding the assessment of custodial / cleanup fees, Licensee agrees to remove trash, including, but not limited to, disposable paper products and food from the premises, lawn and adjacent areas, including neighbor's yards before leaving the Carver and parking lot.

_____ **INITIAL**

VI. SECURITY AND ADULT SUPERVISION

1. In accordance with Section 5.3 of the Short Term License Agreement, the City requires that adequate security be present as required per Licensee's Event. Licensee shall make security arrangements and pay for the provision of adequate security that may be necessary during the Term. All payments must be made directly to the security company hired to work the event. Security payments should not be made to the City of San Antonio or the Carver Community Cultural Center. The City shall determine, within its sole and absolute discretion, the number of security personnel that may be necessary for Licensee's Event depending on the anticipated number of attendees and invited guests and the nature of the Event.
2. Licensee agrees to provide adequate adult supervision for all activities involving minors. Adequate adult supervision is defined as a ratio of at least one adult for every 25 minors.

_____ **INITIAL**

VII. STORAGE OF PROPERTY

1. Equipment and accessories owned by the Licensee may be kept at the Carver from the time that Licensee loads it in (i.e., time of Ingress) to the expiration of the Term. The City of San Antonio is not liable and the Licensee releases the City from liability for theft, loss or destruction associated with such items.
2. Licensee's property left at the Carver beyond the expiration of the term of the License will be disposed of in accordance with the terms of the License unless special arrangements are made with Carver management for temporary storage pending pick up.

_____ **INITIAL**

VIII. INSURANCE

In accordance with Article VI of the Short Term License Agreement, Licensee agrees that, within 30 days prior to the commencement date of the License, Licensee shall provide evidence that Licensee has named the City of San Antonio as an additional insured on its own General Commercial Liability insurance or Licensee has purchased insurance from the City. Insurance can be purchased from the City of San Antonio payable thirty (30) days prior to the commencement date of the License for \$100 for 1-650 people. The insurance premium is subject to change at the discretion of the City's Risk Manager.

_____ **INITIAL**

IX. TECHNICIAN FEES

1. Licensee's use of technical equipment is subject to availability. Technical equipment shall be operated by Carver staff and includes light control board, follow spots, sound control and effects boards, the fly systems, moving curtains and replay system equipment. Licensee agrees to pay a maintenance fee of \$10 for the use of microphones and \$50 per follow spot utilized per event/day.
2. Licensee agrees to pay for the services of technicians in accordance with the "Technician Fees" category in the attached Fee Table which includes labor required to set-up, operate and strike depending on the number of technicians needed and the time during which they are needed.
3. Licensee is responsible for arranging for the services of Carver technicians during working hours, nights, weekends, and holidays by contacting the Carver staff at (210) 207-2250.

_____ **INITIAL**

X. EQUIPMENT

1. Licensee may request the use of available (non-technical) equipment for its Event upon payment of applicable fees. See "Equipment" fee category in attached Fee Table for specific fees. The Carver staff shall demonstrate that the equipment is operable before releasing to Licensee and will require LICENSEE to demonstrate that it is operable after Licensee's use. Licensee shall comply with the policy and checkout procedures regarding use of any especially sensitive or exceptional items of equipment as set by Carver personnel.
2. Licensee agrees that equipment shall not be removed from the premises, unless Licensee is renting the Marley Dance Floor for use off premises.

_____ **INITIAL**

XI. CUSTODIAL / CLEAN UP

Custodial services are available during normal business hours, Monday – Friday, 7:45 a.m. to 4:30 p.m. at no charge to LICENSEE. In the event that custodial services are required due to the serving of food or beverages or after business hours, Licensee agrees to pay applicable custodial / clean up fees. See "Custodial / Clean Up" category in attached Fee Table for specific fees.

_____ **INITIAL**

Revenues**Internal Order 280000000005****Budget**

4502220 Contr Priv Restrict	51,000
6101100 Interfund Transfers In - Hotel/Motel Tax	327,627
6101100 Interfund Transfers In Trust Fund	71,207

Total Revenues**449,834****Appropriations****Organizational Support 2015**

5101010 Regular Salaries	289,901
5101020 Overtime Salaries	0
5101040 Shift Differential	0
5101050 Language Skill Pay	600
5101090 Holiday Hourly Sal	0
5103005 FICA & Medicare Expense	17,442
5103010 Life Insurance	209
5105010 Retirement Exp	22,197
5170040 Civln Actv Healthcr	36,170
5170100 Retiree Health Asses	6,120
5181020 Reserve Perf Pay	1,494
5181025 Reserve COLA	5,390
5201040 Fees to Prof Contr.	63,503
5207010 Travel- Official	6,808

449,834

Organizational Support 2016

Positions	Current No. of Positions	Add/Delete	Revised No. of Positions
80-0040-ADMINISTRATIVE ASSISTANT I	1	0	1
80-0041-ADMINISTRATIVE ASSISTANT II	1	0	1
80-0078-BOOKING & SERVICES COORDINATOR	1	0	1
80-0655-AUDIO/VIDEO PRODUCTION COORDINATOR	1	0	1
80-0844-GRANTS MANAGEMENT OFFICER	1	0	1
80-2092-EDUCATION COORDINATOR	1	0	1
80-0077-EVENT SVCS COORDINATOR (part-time)	1	0	1
Organizational Support 2016	7	0	7

Confirmation of Fiscal Year 2016 Funding Agreement

(Avenida Guadalupe Association)

This Agreement is entered into between Landlord and Tenant as of the later of the two signatures at the end.

1. Identifying Information.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: PO Box 839966, San Antonio, Texas 78283-3966 (Attention: Leasing Manager, Center City Development and Operations)

Tenant: Avenida Guadalupe Association

Tenant's Address: 1314 Guadalupe Street, Suite 201, San Antonio, Texas 78207

Lease: Lease of office, retail, and residential buildings on the North and South sides of Guadalupe Avenue and the South side of El Paso Avenue, West of Brazos and East of San Jacinto.

Ordinance Authorizing Lease: 2009-09-10-0712

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease. References to "Lease" in this amendment include both the original Lease and all amendments to it.

3. Funding for Fiscal 2016.

Pursuant to City Council action on September 10, 2015, the City of San Antonio Budget was approved for the Fiscal Year ending September 30, 2016 that provided funding in the amount of \$142,000.00 (FY 16 Funding) to be distributed to the Tenant in accordance with Paragraph 27, Tenant Funding by Landlord, of the Lease. Tenant agrees that any request for receipt of the FY 16 Funding will be in accordance with the terms and conditions of the Lease. Tenant further agrees that the FY 16 Funding is being provided with no obligation upon the City to provide funding in future years, and any decision to provide funding for future fiscal years shall be completely at the discretion of the City Council.

3. No Default.

Neither Landlord nor Tenant is in default under the Lease and neither party is aware of a cause of action against the other arising out of or relating to the period before the date of Landlord's signature on this amendment.

4. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City of San Antonio, a Texas municipal corporation

Avenida Guadalupe Association, a Texas nonprofit corporation

Signature: _____

Signature: _____

Printed
Name: _____

Printed
Name: Teresa G. Hernandez

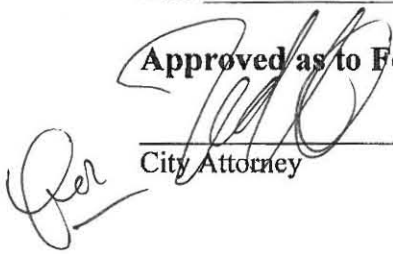
Title: _____

Title: Acting President/CEO

Date: _____

Date: August 12, 2015

Approved as to Form:



City Attorney

STATE OF TEXAS	§	AGREEMENT TO USE ECONOMIC
	§	DEVELOPMENT PROGRAM FUNDS
COUNTY OF BEXAR	§	OF THE CITY OF SAN ANTONIO

This Agreement to Use Economic Development Program Funds of the City of San Antonio (the “Agreement”) is entered into by and between BIOMED SA, (hereinafter referred to as "GRANTEE"), a not-for-profit corporation which is a tax-exempt organization as described in Section 501(c)(3) of the Internal Revenue Code, and the CITY OF SAN ANTONIO, a home-rule municipality, situated within Bexar County, Texas (hereinafter called "CITY"), acting by and through its City Manager or designee, pursuant to City Ordinance No. 2015-09-10-_____ passed and approved on September 10, 2015 (collectively, the “Parties”) and pursuant to Article III, Section 52(a), of the Texas Constitution and Chapter 380.002 of the Texas Local Government Code.

RECITALS

WHEREAS, the healthcare and bioscience industry is among the largest industries in San Antonio and industry analysts have forecast substantial economic returns from medical and biotechnological innovations; and

WHEREAS, in recognition of the economic opportunities afforded by the industry, the Economic Development Council of the Greater San Antonio Chamber of Commerce established BIOMED SA (“GRANTEE”) to facilitate the industry’s growth in the region and to heighten awareness in the industry of the unique assets present within San Antonio; and

WHEREAS, GRANTEE, by accomplishing the aforementioned goals, reduces the burdens of CITY by undertaking such activities that would otherwise be undertaken by CITY; and

WHEREAS, GRANTEE has requested that the City contribute \$100,000.00 to the organization and has made similar requests to Bexar County, CPS Energy, and private entities for its continued operation; and

WHEREAS, CITY created an Economic Development Program, which includes the granting and loaning of public funds, as authorized under Texas Local Government Code §380.001 for the public purposes of developing and diversifying the economy, increasing employment and expanding commerce and has determined that the efforts of GRANTEE significantly accomplish such a public purpose; **NOW THEREFORE**, the Parties agree as follows:

ARTICLE I. PURPOSE

1.01 The purpose of this Agreement is to establish the terms and conditions of a transfer and grant of public money from CITY to GRANTEE to be used to lessen the burdens of the CITY by assuming in part its obligations to develop and diversify the San Antonio regional economy and the Texas economy, through the operations of GRANTEE.

1.02 GRANTEE understands and agrees that this Agreement is subject to mutual termination in compliance with Article XIII of this Agreement. Either Party shall have the option of terminating this Agreement by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either Party exercises the option of terminating this Agreement, then any and all unused funds either allocated and in possession of GRANTEE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to GRANTEE under the terms of this Agreement; or (2) retain any and all funds allocated but not distributed to GRANTEE.

1.03 GRANTEE understands and agrees that the goals and performance measures in this Agreement may be revised and updated by and at the discretion of the Director of the Economic Development Department of the City of San Antonio ("EDD Director") to further the intent of this Agreement. Therefore, GRANTEE agrees that, at such time as any revisions are so made during the Term hereof, this Agreement will be amended to include such revisions. In the event GRANTEE does not agree to any changes, GRANTEE shall have the option of terminating this Agreement by giving thirty (30) days written notice to CITY in compliance with Article XVIII *Termination* of this Agreement. GRANTEE shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.

1.04 GRANTEE understands and agrees that this Agreement is subject to a general reduction in funding by the City Council of CITY. Should CITY implement a reduction in General Fund expenditures, then agreements funded by CITY's General Fund, including this Agreement, may, at CITY's option, be reduced in a like manner. CITY will attempt to provide GRANTEE with as much advance notice of a potential funding reduction as is possible to allow GRANTEE to make budget adjustments.

1.05 In no event shall CITY be liable for any expense of GRANTEE not eligible or allowable hereunder. CITY, in its sole discretion, will determine the eligibility of expenditures.

1.06 GRANTEE covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that GRANTEE shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and GRANTEE, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and GRANTEE. 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 GRANTEE under this Agreement and that the GRANTEE has no authority to bind the City.

ARTICLE II. TERM, AUTHORITY, LITIGATION AND ACCOUNT

2.01 The Term of this Agreement shall be for one year, performable upon execution of the Agreement, effective October 1, 2015 through September 30, 2016

2.02 The City Manager designates the EDD Director or his designee of CITY as administrator of this Agreement. The City Manager may designate a new administrative entity by giving GRANTEE notice thereof, pursuant to Article XIX. GRANTEE shall report directly to the EDD Director or his designee. Director shall modify the goals and performance measures of this Agreement as necessary to further the intent of the Agreement.

2.03 Pursuant to City Ordinance No. 2015-09-10-_____, passed and approved on September 10, 2015, CITY agrees to transfer, in accordance with the terms and conditions of this Agreement, a lump sum payment of ONE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$100,000.00) to GRANTEE throughout the Term of this Agreement. These funds shall be deposited in an account separate from all other GRANTEE funds and shall not be commingled with any other account of GRANTEE. Together with any and all interest earned subsequent to these deposits and/or investment income and/or any other source of revenue from these funds, the funds, for the purposes of this Agreement, shall be known as the "GRANT." The GRANT shall be used by GRANTEE only for the funding and partial funding of GRANTEE's operating expenses, including salaries.

2.04 Under no circumstances will the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding, including proceedings against the CITY. Furthermore, GRANTEE must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.

2.05 During the Term of this AGREEMENT, if GRANTEE files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate. GRANTEE, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.

2.06 For purposes of this Article, "adversarial proceedings" include any cause of action filed by the GRANTEE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

ARTICLE III. CONSIDERATION AND SCOPE OF SERVICES

3.1 GRANTEE agrees to provide the services described in Exhibit A, entitled "Scope of Services," to this Agreement, attached hereto and made a part of this Agreement, in exchange for the compensation described in Article II. Exhibit A may be amended by agreement of the Parties.

3.2 All work performed by GRANTEE hereunder shall be performed to the satisfaction of CITY. The determination made by CITY shall be final, binding and conclusive on all Parties

hereto. CITY shall be under no obligation to pay for any work performed by GRANTEE, which is not satisfactory to CITY. CITY shall have the right to terminate this Agreement, in whole or in part, should GRANTEE's work not be satisfactory to CITY; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work.

ARTICLE IV. COMPLIANCE

4.01 CITY's ECONOMIC DEVELOPMENT DEPARTMENT is assigned monitoring responsibility for this Agreement.

- A. GRANTEE shall provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of GRANTEE's books, records and files on the objectives covered by this Agreement.
- B. An accounting system using generally-accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory. GRANTEE understands that CITY may require any and all books, records and files of GRANTEE necessary to ensure GRANTEE's compliance and use of generally-accepted governmental accounting principles.
- C. All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date of this Agreement. However, if during the course of this three-year period, an audit or investigation of the GRANTEE begins, then GRANTEE is required to maintain said records until such time as the audit or investigation is completely finished, plus three (3) years thereafter.
- D. GRANTEE agrees that during the Term of this Agreement, any duly-authorized representative of CITY's ECONOMIC DEVELOPMENT DEPARTMENT shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this Agreement.
- E. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, GRANTEE shall immediately refund such amount to CITY. GRANTEE further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CITY's ECONOMIC DEVELOPMENT DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.

- F. The submission of falsified information or the failure to timely submit all information by GRANTEE as requested by CITY is grounds for termination of this Agreement.
 - G. GRANTEE agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute toward, coordinate with, or facilitate the performance of this Agreement.
 - H. GRANTEE shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, and obstruction of investigation or other criminal action and to prevent frauds and abuse of funds.
- 4.02. GRANTEE agrees to establish internal procedures that ensure employees funded or partially-funded by this Agreement have an established complaint and grievance policy.
- A. Such grievance policy shall include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - B. In the event no complaint and grievance policy has been established, GRANTEE shall follow the procedures outlined in the City of San Antonio Municipal Civil Service rules for employees funded or partially-funded by this Agreement.
- 4.03 GRANTEE agrees to comply with, and require compliance by any and all contractors and professional consultants performing work in connection with any procurement of product, infrastructure or service that will be paid for out of the GRANT, all federal, state and local laws, rules and regulations including, but not limited to, the Fair Labor Standards Act, the Equal Pay Act and the Equal Employment Opportunity Act, all as amended and as applicable.
- 4.04 GRANTEE understands and agrees that GRANTEE is required to refund money, pursuant to 80(R) HB 1196, that GRANTEE has received from CITY through this Agreement, in the event of GRANTEE's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.
- 4.05 As a condition of entering into this Agreement, GRANTEE represents and warrants that it has complied with, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of CITY's SBEDA Ordinance No. 2010-06-17-0531. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise

lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. GRANTEE shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to CITY contracts.

4.06 Insofar as practical, in carrying out the terms of this Agreement, GRANTEE shall use a good faith effort to use the employment and training programs of CITY.

4.07 GRANTEE will complete and submit CITY's Ethic's Disclosure Form prior to GRANTEE'S receipt of any GRANT funds.

4.08 GRANTEE agrees that CITY may carry out monitoring and evaluation of activities to ensure GRANTEE'S compliance with this Agreement.

ARTICLE V. RECORDS, REPORTS AND AUDIT RIGHTS

5.01 GRANTEE shall maintain, in its San Antonio offices, all books and financial records in accordance with generally-accepted accounting principles for governmental entities and as may be reasonably prescribed by CITY's Chief Financial Officer, which reflect all expenditures made from the GRANT, including work by subcontractors. Such books and financial records, together with any other documentation necessary for verification of GRANTEE'S compliance with the terms of this Agreement, shall be made available to CITY on request through the EDD Director or the City Auditor or their representatives. CITY shall have the authority to audit, examine and make excerpts or transcripts from said books, records and documentation regarding all expenditures related to this Agreement. GRANTEE'S record system shall contain sufficient documentation to provide full support and justification for each expenditure made from GRANT funds. CITY's Auditor or his designee may review and approve GRANTEE'S system of internal accounting and administrative controls at any time during the term of this Agreement to assure compliance by GRANTEE.

5.02 GRANTEE shall submit to CITY's EDD Director, on a **semi-annual** basis, the Consolidated Balance Sheet, Statement of Support and Revenue, Statement of Changes in Financial Position of the GRANTEE and a line item Summary of Expenditures paid from GRANT funds. These reports shall be prepared by the 30th of the month following the end of the reporting quarter. Additionally, GRANTEE agrees to allow CITY to review all books and financial reports of GRANTEE pertaining to the GRANT funds on an **annual** basis.

5.03 GRANTEE shall submit to CITY's EDD Director and CITY Auditor, on an **annual** basis, a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards for governmental entities within one hundred and twenty (120) days of GRANTEE'S fiscal year end. The audited financial statement shall include a detailed schedule of receipts and expenditures of GRANT funds by budgeted cost category. It is imperative any auditor performing an audit of GRANTEE read the entire Agreement, including all attachments, if any, between the CITY and GRANTEE, since the

budget and financial compliance of the Agreement is only a portion of the total contractual obligation. GRANTEE shall submit the audited financial statements and any management letter prepared by the independent CPA to both the Department of Economic Development, P.O. Box 839966, San Antonio, Texas 78238-3966, and to the Office of the City Auditor, 111 Soledad, Suite 600, San Antonio, Texas, 78205.

5.04 During the term of this Agreement, GRANTEE shall cause to be delivered to CITY's EDD Director copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. GRANTEE understands and agrees that CITY shall have a representative on the Board of Directors and the Executive Council, as outlined in its Bylaws.

5.05 GRANTEE understands that because the GRANT is of public money, information pertaining to the receipt and expenditure of said funds are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

ARTICLE VI. INSURANCE

6.01 GRANTEE agrees that upon entering a contract for professional services or infrastructure or capital improvement construction, if any, to be paid for out of the GRANT, GRANTEE, in accordance with this Agreement, shall cause its contractors or subcontractors to provide proof of insurance issued by a company admitted to do business in the State of Texas, and rated VII (A-) or better by A.M. Best Co., in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Commercial General Liability - to include coverage for the following where the general exposure exists	Bodily Injury and Property Damage: <u>\$1,000,000</u> , per occurrence; \$2,000,000 aggregate or its equivalent in Umbrella or Excess Liability coverage
(a) Premises/Operations (b) Independent Contractors (c) Products/Completed Operations (d) Broad Form Property Damage including Fire Legal Liability (e) Contractual Liability	
2. Business Automobile Liability Insurance - to include coverage for:	Combined Single Limit for Bodily Injury and Property Damage: <u>\$1,000,000</u>
(a) Owned/Leased Automobiles (b) Non-Owned Automobiles (c) Hired Automobiles	
3. Builders Risk*	Amount of Contract

4. Commercial Crime

Amount of Contract

*Where Applicable

6.02 GRANTEE agrees that contractor(s) shall not commence any work under its (their) contract(s) until all insurance certificates have been provided to and approved by CITY. Neither GRANTEE, the contractor nor any agent thereof, shall commence any work until all insurance required of the contractor(s) has been obtained, reviewed and approved by CITY. Approval by CITY shall not relieve or decrease the liability of the contractor(s).

6.03 Premiums chargeable for such insurance may come from GRANT funds, and the insurance shall remain in force during the term of the contract, or any extension thereof.

6.04 GRANTEE further agrees that with respect to the above-required insurance, CITY shall:

- A. be provided with a Waiver of Subrogation, but only as it pertains to Workers' Compensation and Employer's Liability;
- B. be provided with thirty (30) days advance notice in writing of non-renewal, cancellation or material change; and
- C. be provided with a Certificate of Insurance(s), evidencing the above-required insurance, prior to the commencement of any work. Said Certificates of Insurance(s) and all notices required herein shall be provided to:
 - 1) Director, Economic Development Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.
 - 2) City Clerk, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

Copies of insurance policies shall be kept in GRANTEE'S office and shall be made available for inspection by CITY.

ARTICLE VII. CONSTRUCTION PROVISIONS

It is not anticipated that construction or infrastructure activities will be undertaken. However, to the extent that they are, the following provisions shall apply:

7.01 If infrastructure changes or other construction is to be undertaken with GRANT money, then GRANTEE, or its contractors and subcontractors shall provide payment, performance and subdivision bonds, or such other similar cash equivalent or letter of credit, provided same is approved by the City Attorney and the Chief Financial Officer, that names CITY as Obligee and shall submit proof of same to CITY, before any GRANT-funded infrastructure work commences.

7.02 By subsequent written agreement, GRANTEE, by Board resolution, and CITY, after approval by the City's Director of Public Works and the City Attorney, may agree to hold one or more federally-insured certificates of deposit or U.S. Treasury securities to guarantee subdivision work. Without further approval or authorization of the City Council, the City Manager of CITY is hereby authorized to execute any such agreement, and CITY and the City Planning Commission may accept such agreement in lieu of the subdivision performance bond normally required. Provided, however, that any agreement reached pursuant to this section must be attached to this Agreement as a separate appendix, and shall be included as part of the official, public records of the City Clerk. Provided further, that any such agreement shall be valid only if CITY retains the securities set aside in lieu of the subdivision bond. In case of default by GRANTEE on subdivision work, it is also provided that first use of the set-aside funds and interest/investment earnings shall be for performance of the subdivision work by CITY in any legal manner as CITY may choose.

7.03 Compliance with the Davis-Bacon and the Copeland Anti-Kickback Acts shall be required, when and if GRANT funds are spent on infrastructure work, as if this infrastructure work were financed in whole or part by loans or grants from the United States.

7.04 GRANTEE shall promptly pay when due all taxes, license fees, permit fees, debts and obligations incurred by GRANTEE in connection with infrastructure activities or capital improvement activities, if any, to the extent that such taxes and fees are not waived by applicable governmental entities or agencies. GRANTEE shall be responsible for its contractors and subcontractors with regard to securing any fees and paying any taxes, debts or obligations incurred by said contractor or subcontractor.

7.05 If infrastructure projects are to be constructed, GRANTEE shall submit all designs including all drawings, plans, specifications and estimated costs for infrastructure development or capital improvements to be paid from GRANT funds before procuring construction of same. CITY'S approval may be withheld if the proposed infrastructure or capital improvement design and construction fail to comply with applicable codes, standards and specifications.

ARTICLE VIII. INDEMNIFICATION

8.01 **GRANTEE 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 GRANTEE'S activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, 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 GRANTEE 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.

8.02 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. GRANTEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

8.03 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by GRANTEE in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. GRANTEE 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 GRANTEE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and GRANTEE 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.

8.04 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of GRANTEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone 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 GRANTEE or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE IX. PUBLIC ACKNOWLEDGEMENT AND POLITICAL ACTIVITIES

9.01 Public acknowledgement of CITY's contribution must be made when funds of CITY are utilized and in all cases when GRANTEE chooses to acknowledge other entities for contributions. Such acknowledgement may include CITY's recognized seal or other appropriate language. No reference to any individual shall be used.

9.02 No funds provided from or through CITY shall be contributed to or used for, in whole or in part, the conduct of political activities or the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of any CITY-funded grant or activity be assigned to work for or on behalf of any partisan or non-partisan political activity or candidate. This Section 9.02, including (A)(1 through 4) and (B)(1 through 3), shall be included in any contract or subcontract of GRANTEE:

A. The following is prohibited:

- 1) Working, or directing other staff to work, on any political activities on paid time.
- 2) The use of facilities or equipment, paid for in whole or in part with CITY funds, for political purposes. This includes space, office equipment and supplies, and telephones during agency time as well as after regular-duty hours.
- 3) The implicit or explicit coercion of staff to work on political activities on their own time.
- 4) The above statements shall not be construed to prohibit any person from exercising his rights as a citizen to express his opinion and to cast his vote.

B. In order to ensure the above, GRANTEE shall:

- 1) Provide every staff person with a statement of the above prohibition.
- 2) Include on that statement 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 policy, to write or call and report the same to the Director of the Economic Development Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas, 78283; 210-207-8080.
- 3) Have each employee sign the statement and include the same in GRANTEE's personnel files, as appropriate, with copies to CITY.

ARTICLE X. CONFLICT OF INTEREST

10.01 GRANTEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Part B, Section 10 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 parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

10.02 Pursuant to Section 10.01 above, GRANTEE warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. GRANTEE further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

ARTICLE XI. NEPOTISM

11.01 GRANTEE agrees that it shall not award a contract of any nature, which is to be paid for from this GRANT, to any person who is related to a member of GRANTEE'S Board of Directors or staff.

ARTICLE XII. DEFAULT

12.01 If GRANTEE fails or refuses to comply, or fails or refuses to require contractor or subcontractor compliance with the material provisions of this Agreement and/or if at any time CITY learns that a contractor or subcontractor is willfully violating or refusing to observe the material conditions, provisions or stipulations of this Agreement, CITY through its City Manager or her designee may, if such noncompliance continues for thirty (30) days after receipt of written notice, terminate this Agreement and require reimbursement of all GRANT funds. All costs and expenses of finishing applicable projects shall then be the sole responsibility of GRANTEE.

12.02 If GRANTEE fails to comply with the material terms of any other contract or agreement to which CITY is a party, although unrelated to this Agreement, CITY through its City Manager or her designee may, by written notice, direct GRANTEE to comply with the terms of said Agreement. If noncompliance continues beyond thirty (30) days from such notice, the City Manager or designee may, in addition to seeking remedies at law and in equity, require reimbursement of all then-unexpended GRANT funds.

12.03 In the event of termination due to material default by GRANTEE, GRANTEE shall return to CITY, within sixty (60) calendar days of receiving CITY'S written notice of termination, all funds received from CITY under this Agreement.

ARTICLE XIII. ASSIGNMENT

13.01 THIS AGREEMENT IS PERSONAL TO GRANTEE AND FUNDS RECEIVED AS A RESULT HEREOF SHALL ONLY BE USED BY GRANTEE FOR THE PURPOSES STATED HEREIN. GRANTEE SHALL NOT ASSIGN THIS AGREEMENT NOR SUBCONTRACT ANY OR ALL OF THE RIGHTS AND DUTIES HEREUNDER.

13.02 If for any reason GRANTEE loses its tax-exempt status and is no longer a tax-exempt non-profit entity as described in Section 501(c)(3) of the Internal Revenue Code, all assets procured by the GRANT may be transferred, upon the written consent of City, to another qualifying corporation upon City Council approval.

ARTICLE XIV. GOVERNING LAW AND VENUE

14.01 This Agreement shall be performable in Bexar County, Texas and is governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

ARTICLE XV. LEGAL CONSTRUCTION

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

ARTICLE XVI. WAIVER

16.01 No waiver by either Party 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 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.

16.02 Notwithstanding the above, GRANTEE 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.

16.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.

ARTICLE XVII. RELATIONSHIP OF PARTIES

17.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

ARTICLE XVIII. TERMINATION

18.01 The obligations of GRANTEE hereunder shall cease and terminate after audited financial reports document the expenditure of all GRANT funds, except that the obligations of GRANTEE under Article V hereof shall cease and terminate one (1) year after the disbursement of all GRANT funds.

ARTICLE XIX. NOTICES

19.01 Any notice or other communications to be given in connection with this Agreement must be in writing, and may be given by: (a) actual delivery; or (b) certified or registered mail and shall be deemed to have been given and received either: (i) upon actual delivery [if delivered pursuant to subsection (a) above]; or (ii) forty-eight (48) hours after a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, addressed as follows:

If to the GRANTEE: Ann Stevens
 President
 BioMed SA
 602 East Commerce Street
 San Antonio, Texas 78205

If to CITY: Director
 Economic Development Department
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966

Provided, however, that either Party may at any time change the place of receiving notice following ten (10) days written notice of such change of address to the other Party in accordance with the manner of giving notice described above.

ARTICLE XX. ENTIRE AGREEMENT

20.01 This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

ARTICLE XXI. AMENDMENTS

21.01 No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties hereto.

ARTICLE XXII. EXECUTION AUTHORITY

22.01 The Parties hereto represent and assure that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution, ordinance or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required. The signers of this Agreement represent and assure that they have full legal authority to execute this Agreement and to bind the Party for whom they are signing to all terms, performances and provisions herein contained.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL
FORCE AND EFFECT OF AN ORIGINAL, THIS THE _____ DAY OF
_____, 2015.

CITY OF SAN ANTONIO

BIOMED SA

Lori Houston
Assistant City Manager

Ann Stevens
President

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A: BIOMED Scope of Services

This “Exhibit A: Scope of Services” is subject to change in accordance with revisions agreed to by the Parties, evidenced by a written, acknowledged agreement.

GRANTEE shall accomplish the following in accordance with the terms and conditions of the Agreement:

- GRANTEE shall provide CITY’s EDD Director with proper documentation verifying receipt of Fiscal Year 2015s funding commitments from sources other than CITY.
- GRANTEE shall provide quarterly updates on its activities to the CITY’s EDD Director and, upon request, to the City Council of CITY, its boards, committees and/or commissions.
- GRANTEE shall provide CITY’s EDD Director semi-annual budget reports outlining cumulative contributions and expenditures (to include all sources of funding).
- GRANTEE shall submit all required and requested documents to CITY’s EDD Director for proper review of GRANTEE’s expenditures and activities associated with this Agreement.
- GRANTEE shall include recognition of the CITY’s contribution to GRANTEE in all of GRANTEE’s promotional materials, products and publications.
- GRANTEE shall provide CITY’s EDD Director with all marketing materials and literature showing evidence that the CITY’s contribution to GRANTEE is recognized in compliance with the provisions of this Agreement.

GRANTEE shall collaborate with the City, SAEDF and other community economic development partners in focusing on the achievement of the following goals during the Term of this Agreement:

- GRANTEE shall serve as a ‘sector expert’ resource for local economic developers (including the CITY’s Economic Development Department) in developing strategies to sustain and grow San Antonio’s biomedical industry.
- GRANTEE shall work with local industry leaders to identify San Antonio’s competitive strengths and organize industry leadership to identify and execute key strategic activities towards the advancement of these strengths.
- GRANTEE shall coordinate with SA2020 towards progress of the SA2020 Vision Goals in the cause area of Economic Competitiveness.
- GRANTEE shall work with the San Antonio Economic Development Foundation toward implementation of the Forward San Antonio Strategic Plan.
- GRANTEE shall assist in helping to secure biomedical and healthcare industry prospects, jobs, and investment to locate, expand or initiate start-up operations in San Antonio as described in Table 1: Economic Development Metrics. Prospects are defined as a

company which has a current site selection process underway, has San Antonio on a list of sites to consider and has the means (the resources/funding) to carry the project to a conclusion.

Table 1. Economic Development Metrics

• BioMed SA Action Plan, FY 2015Goals	
• New Qualified Prospects	• 3
• Recruitment/Expansion	• 2
• New Jobs Created	• 15
• BioMed Conference / Marketing Event	• 1
• International Trade & Investment Missions	• 1

- GRANTEE shall work in conjunction with partners such as The Texas Technology Development Center (T3DC) and the San Antonio Economic Development Corporation (SAEDC) towards the cultivation of public/private funds focused on catalytic growth capital in support of San Antonio's innovation ecosystem.
- GRANTEE shall use its annual Palmaz Award to raise the visibility of local biomedical innovators and bring national innovators to San Antonio to engage with the community's biomedical sector.
- GRANTEE shall develop advertising and marketing campaigns to promote San Antonio's biomedical industry and shall participate in strategy development with regard to the "Culture of Business" campaign in coordination with the San Antonio Economic Development Foundation
- GRANTEE shall support recruitment strategies and tools to attract world-class scientists, physicians and research teams to San Antonio.
- GRANTEE shall use its relationships with local biomedical firms to organize company visits for the economic development community's business retention and expansion team and facilitate dialogue about business challenges and opportunities.
- GRANTEE shall work with the Convention and Visitor's Bureau and tourism industry to attract new biomedical and healthcare industry conventions to San Antonio and expose attendees to the CITY's biomedical industry while they are here.
- GRANTEE shall work with CITY's International Relations Office and Free Trade Alliance to identify opportunities for foreign biomedical companies to locate in San Antonio or to do business with local biomedical organizations.
- GRANTEE shall work with community partners to help guide industry efforts to create a pipeline of skilled workers for San Antonio's biomedical industry and encourage efforts to expand bioscience educational opportunities.

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

CONSULTANT to CITY of an invoice and the approval of said invoice by the Deputy City Manager assigned the Office of Sustainability, or his designee. Upon approval of the invoice by CITY, CITY shall pay CONSULTANT no later than thirty (30) days after the date of such approval; provided, however, that such approval shall be based upon satisfactory completion of the work described in Exhibit A. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.

- 2.2 Final Payment due under the CONTRACT will not be paid until the all work, reports, data, documents and any other unfinished services necessary to complete performance under the CONTRACT have been received, performed and are approved by the CITY, as meeting all the tasks required hereunder in Section 3.1. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.
- 2.3 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.4 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the CONTRACT referenced in Section 2.1 of the CONTRACT.

III. SCOPE OF SERVICES

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the “Build San Antonio Green™ City of San Antonio Scope of Work Funding Request for 2016”, dated May 1, 2015, attached hereto as Exhibit A. Goals, objectives and performance standards for the Project will be established by the CITY’S Office of Sustainability and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Exhibit A is fully incorporated herein verbatim for all purposes, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONSULTANT.

IV. TERMINATION

- 4.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 TERMINATION WITHOUT CAUSE: The CONTRACT may be canceled by either party upon thirty (30) calendar days written notice, evidenced by a U. S. Postal Mail Return Receipt Requested for certified delivery, or an affidavit of personal delivery, provided such notice specifies an effective date of termination, which termination date

shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is actually received by the other party or the certified mail receipt evidences delivery. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party or evidence of certified mailing as described above. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.

- 4.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 4.4 **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 CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 4.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that through action or no action initiated by the CITY of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of a CONTRACT and has no funds to do so from other sources, the CONTRACT may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for

which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.

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

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the CONSULTANT.

VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 6.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 6.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 6.4 If the CONSULTANT receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this CONTRACT is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 7.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 7.3 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.4 The intellectual work products, if any, that result from this Contract shall be owned by the CITY, and as such are public property.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT 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 project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT 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.
- 8.2 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, CONSULTANT will immediately:

8.2.1 Either:

- a) obtain, at CONSULTANT '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,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- (c) 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.

8.2.2 CONSULTANT further agrees to:

- a) 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 CONTRACT,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided:

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONSULTANT 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,
- that the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provides CONSULTANT with written notice within **15** days following the formal assertion of any claim with respect to which the CITY asserts that CONSULTANT assumes responsibility under this section.

IX. RECORDS RETENTION

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.
- 9.2 CONSULTANT shall deliver all documents to the CITY, upon termination of the CONTRACT, in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 9.3 The CONSULTANT shall retain all records owned by or to which the CITY has the legal right of access to satisfy the City's obligations for a retention period required by the Texas Local Government Records Act, being five years from date of contract termination, and in the event of litigation or claims, whatever additional time is necessary to resolve all litigation or claims.
- 9.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such open records requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at the City's Office of Sustainability, 1400 S. Flores, San Antonio, Texas, or successor local address, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

- 11.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and meets all competence standards applicable to the services provided herein.

XII. CONFLICT OF INTEREST AND ETHICS

- 12.1 CONSULTANT acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in 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 parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 12.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY’s Ethics Code.
- 12.3 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- 12.4 **Additional Ethics Form Filing: Texas Local Government Code.** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. CONSULTANT must confer with its own legal advisor if you have questions regarding the statute or form.

XIII. INSURANCE

- 13.1 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT’s or its subcontractors’ performance of the work covered under this Contract.
- 13.2 Within ten (10) working days following execution of this Contract, CONSULTANT shall obtain a fidelity bond covering all persons handling funds received or disbursed

hereunder and/or signing or co-signing checks for said fund disbursement. CONSULTANT's fidelity bond shall be in an amount of Eighty-Five-Thousand dollars (\$85,000.00), and evidence of same shall be filed with CITY prior to any disbursement of funds hereunder but no later than ten (10) working days following execution of this Contract. CONSULTANT shall ensure that such bond shall contain a provision that cancellation or expiration notice is sent to CITY at least sixty (60) days prior to the effective date of such cancellation or expiration.

- 13.3 Prior to the commencement of any work under this Contract, CONSULTANT shall furnish a completed Certificate of Insurance to CITY's Office of Sustainability Director and City Clerk's Office. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which certificate shall furnish and contain all required information referenced or indicated thereon. **THE CERTIFICATE MUST IDENTIFY THE PROJECT CONTRACT BY NAME, "Build San Antonio Green™ City of San Antonio Scope of Work Funding Request for 2016"**. CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City's Office of Sustainability Director and no officer or employee shall have authority to waive this requirement.
- 13.4 CITY reserves the right to review the insurance requirements of this Contract during the effective period of this Contract and any extension or renewal hereof, if any, and to require modification of insurance coverage and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.
- 13.5 CONSULTANT's financial integrity is of interest to CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
(A) Worker's Compensation, and Employer's Liability, if applicable	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Commercial General (Public) Liability-to include but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000 or its equivalent in umbrella

Or excess liability coverage

- (1) Premises/Operations
- (2) Independent Contractor's Liability
- (3) Products and Completed Operations
- (4) Personal Injury
- (5) Contractual Liability

3.6 MATERIAL REQUIREMENTS: CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for 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). Upon such request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. All of CONSULTANT's insurance requirements under this Contract are material obligations.

13.7 CONSULTANT agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance shall contain the following required provisions.

- Name CITY and its officers, employees, and elected representatives as additional insureds 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;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy (if applicable) shall provide a waiver of subrogation in favor of CITY.

13.8 CONSULTANT shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

**City of San Antonio
Office of Sustainability
P.O. Box 839966
San Antonio, Texas 78283-3966**

13.9 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the CONTRACT; however, procuring of said insurance by CITY is an alternative to other

remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, CITY shall have the right to terminate the Contract, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

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

XIV. INDEMNITY

- 14.1 Consultant covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this CONTRACT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 14.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own**

expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

XV. AMENDMENT

- 15.1 This Contract, together with its authorizing ordinance and Exhibit A, shall constitute the full and final CONTRACT between the parties hereto.
- 15.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONSULTANT and dated subsequent to the date hereof. Material amendments that adjust compensation or performance periods must be approved by the City Council.
- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be incorporated into this CONTRACT with notice and written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONSULTANT expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Attn: Director
Office of Sustainability
P.O. Box 839966
San Antonio, Texas 78283-3966

CONSULTANT

Build San Antonio Green
Attn: Jason Pittman, Vice-Chair
118 Broadway, Suite 236
San Antonio, Texas 78205

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 Any subcontracts or assignments of interests entered into by CONSULTANT concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT's effective date. CONSULTANT shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should CONSULTANT assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.
- 18.2 CONSULTANT's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any CONTRACT with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all Contracts with approved subcontractors.
- 18.3 CONSULTANT agrees to notify CITY of any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the CITY.
- 18.4 In no event shall such written consent, if obtained, relieve CONSULTANT from any and all obligations hereunder or change the terms of this CONTRACT.
- 18.5 CITY must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIX. SUCCESSORS AND ASSIGNS

- 19.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

xx. NONWAIVER OF PERFORMANCE

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the CONSULTANT from any covenants and conditions required in this CONTRACT.
- 20.2 Unless otherwise specifically provided for in this CONTRACT, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT 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 CONTRACT, 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 CONTRACT 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 XV. Amendment. 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.

xxi. COMPLIANCE

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The CONSULTANT 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 CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Consultant certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing foregoing laws.

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

XXII. VENUE AND GOVERNING LAW

- 22.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXIII. SEVERABILITY

If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of 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 CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal, or unenforceable, there be added as a part of the CONTRACT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIV. GENDER

Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

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

XXVI. ENTIRE AGREEMENT

This CONTRACT, together with its authorizing ordinance and Exhibit A, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT. No other

BSAG PSA FY2016

agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

EXECUTED this the _____ day of September, 2015.

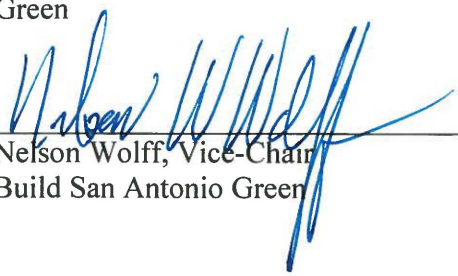
CITY

City of San Antonio, Texas

Peter Zaroni,
Deputy City Manager
Office of the City Manager

CONSULTANT

Metropolitan Partnership for Energy
(MPE), d/b/a Build San Antonio
Green



Nelson Wolff, Vice-Chair
Build San Antonio Green

APPROVED AS TO FORM:
Martha G. Sepeda
Acting City Attorney

By: Assistant City Attorney

EXHIBIT “A”

May 1, 2015

Build San Antonio Green®
City of San Antonio Scope of Work
Funding Request for 2016

Build San Antonio Green® (BSAG) is a non-profit organization founded by the City of San Antonio and other partners in 2001. BSAG is an official partnership of the City of San Antonio, Bexar County, CPS Energy, San Antonio Water System, the Greater San Antonio Builders Association, VIA Metropolitan Transit, the Alamo Area Council of Governments, the Greater Bexar County Council of Cities, and Solar San Antonio.

BSAG works with Partner organizations to develop and implement energy and emissions reduction policies for air quality improvement, water conservation, energy efficiency, and renewable energy, chiefly through the development and administration of the green building program. BSAG provides technical workshops on energy efficiency, conservation, renewable energy and green building, while promoting the Build San Antonio Green® program and certifying Green-Built Homes in San Antonio.

Solar San Antonio (SSA) has been committed to transforming San Antonio into a leader in renewable energy through actively encouraging the widespread use of solar and other renewable, sustainable energy sources. By informing the community about how it benefits the regional economy, environment and human health.

We are in a very exciting time of growth and change for these two organizations. It was always the vision of our founder, Bill Sinkin that these organizations come back together as one force for positive change in San Antonio. We are in the process of consolidating SSA into BSAG in order to carry on the work of both organizations under BSAG leadership.

Build San Antonio Green™ will be instrumental in helping San Antonio meeting its future sustainable growth and development goals, as laid out in the SA Tomorrow and SA 2020 plan. This will be accomplished through leadership in energy & water conservation, promoting sustainable land use, green jobs training, and assuming a prominent role in local sustainability efforts. And now also including aspects of Solar San Antonio programs that help to bring affordable, clean, and renewable energy to the people of San Antonio.

Build San Antonio Green® has been recognized at the local, state and national levels for the program’s accomplishments. BSAG has won numerous awards including the prestigious **2009 “Green Building Program of the Year”** award by the National Association of Home Builders, the **2009 “Texas Environmental Excellence Award”** from the Texas Commission on Environmental Quality, San Antonio Water System’s **WaterSaver Partner of the Year** in **2009**, the **2011 ENERGY STAR “Leadership in Housing Award,”** and most recently, **2013 National Association of Home Builders Green Award for “Advocate of the Year – State/Local Government”, and 2014 National Association of Home Builders “Advocate of the Year”**.

BSAG has certified **4405 green homes** under our program to date, including 4350 single family new construction homes, 50 single family retrofit projects, and 5 multifamily projects. This has resulted in the **prevention of more than 51 Million pounds of CO₂ to date**, the equivalent of taking 4239 cars off of the road for one year. In addition, the certified homes **have resulted in more than 8.43 megawatts of peak demand reduction**.

The program has experienced rapid growth in certifying homes in Bexar County. To illustrate the program's rapid growth, in 2011 BSAG certified 266 homes, 633 homes in 2012, and in 2013 the program grew to certify 1,065 homes in the San Antonio region. In the first quarter of 2015, BSAG has already certified 600 homes, with another 280 pending and 450 under construction.

BSAG 2016 Request for Funding

For the 2016 budget year, BSAG is requesting \$ 85,000.00 from COSA as income to support organizational operations and activities alongside the other BSAG Funding Partners.

In the Council Consideration Request dated June 29, 2006 regarding COSA's Energy Conservation Plan, Goal 7 states that future funding to MPE be \$ 50,000.00 per year or as recommended by COSA Staff. Solicitation for 2016 Bexar County funding in the amount of \$ 85,000.00 has been submitted. Judge Wolff supports our request for additional funding to accommodate the consolidation of SSA into BSAG, with the understanding that our scope and volume of work will be greatly increased for the coming year. The 2016 funding from CPS Energy has not yet occurred due to CPS Energy's fiscal year.

BSAG requests funding from the City of San Antonio to include in the BSAG 2016 Budget to support organizational operations and activities that support the following:

1.) Certification of Green Homes through Build San Antonio Green™

Build San Antonio Green™ (BSAG) is a residential green building program of the Metropolitan Partnership for Energy and the Greater San Antonio Builders Association (GSABA). BSAG promotes conservation and efficiency, and was developed with input from partners and community stakeholders to support and encourage local rebates. MPE works with the building and development community to implement green building, while also educating legislators and insurance groups to provide incentives for Green Building. BSAG is not only San Antonio's local green building program, it is also the only program that includes and encourages the UDC Neighborhood Patterns, SAWS Rebates and Landscape List, San Antonio Landscape Care Guide, CPS Energy Rebates and Net Metering Program, and The City of San Antonio's Tree Protection Ordinance.

Homes are certified green under the BSAG program through a quality review process. Builders entering the BSAG program receive ongoing training in green building techniques, and are required to attend Continuing Education Classes (CECs). BSAG's programs consist of detailed green building checklists. Member builders submit building plans and the BSAG checklist to the BSAG office, where they are reviewed for certification by BSAG Staff. Each green home built under approved specifications will earn a certificate showing the certification level and be provided with a Homeowners Manual containing operational information about the home.

BSAG requirements are based on traditional stick frame construction and prescribes strategies to reduce electrical and water consumption, utilize resources and materials in a more efficient manner, minimize impact on the site, and improve indoor air quality. It is geared toward volume builders and affordable developers, and has received over 700 commitments for Green Homes.

Build San Antonio Green™ works to make green building affordable and thereby enticing to builders. To date Build San Antonio Green has certified more than 60 affordable homes: homes that cost \$110,000 or less. BSAG services will enhance current City housing programming by expanding application of other program components. This will substantially increase the total percentage of BSAG homes in the “affordable homes” category, and demonstrate to other builders that green building is easy, accessible, and affordable.

Tasks:

- New Member Orientation Education of Builders at BSAG Workshops
- Collection of pre-construction requirements and home submittal information
- Input home data in BSAG home’s database
- Review of home plans to ensure compliance with BSAG requirements
- Conference with builder, architect, and/or subcontractor to further explore BSAG review process
- Site observations to verify several BSAG requirements including but not limited to insulation of water lines; duct sealing; on-site tree protection; construction waste management; ventilation of kitchen range hood to exterior; approved fireplace; installation of low-flow water fixtures and high efficiency toilets; and SAWS approved landscape.
- Collection of verification documents for ENERGY STAR® qualified appliances and equipment
- Collection of post-construction documents such as ENERGY STAR® HERS Certificate and Home Report
- Issue of BSAG certification upon requirements’ compliance
- Updates and revisions to BSAG Homeowner Manual to reflect programmatic changes
- Homeowner education through BSAG Homeowner’s Manual
- Calculation of home’s energy savings and emission reduction

1a.) Administration of the *Green Retrofit and Energy Retrofit* Build San Antonio Green (BSAG) Programs for existing homes.

Residential *Green Retrofit* and *Energy Retrofit* Programs – The Build San Antonio Green *Green Retrofit* program was launched in 2008 and 39 homes have been certified to date. The *Green Retrofit* program is a comprehensive home renovation certification option with a focus on making home more efficient and healthier. Projects certified under this program must complete a list of Core Guidelines that include both prescriptive and performance requirements. The *Energy Retrofit* certification was developed in 2010 to offer additional options for homes that do not need extensive retrofit work in all five program areas but will still benefit from significant energy improvements. The program has seen very rapid growth and is likely to continue serving

as an important certification option as demand for retrofit projects increases. The *Green Retrofit* and *Energy Retrofit* programs are gaining interest among builders..

By expanding the applications of BSAG program components, BSAG will work more closely with the Housing and Neighborhood Services Department on such programs as the Owner-Rehab. The *Green* and *Energy Retrofit* programs provide easy-to-follow formats for retrofitting existing homes. Similar to Level 1 and Level 2 of the *Green Retrofit*, the *Energy Retrofit* is in a checklist format. Builders submit plans for review by the Build San Antonio Green staff and site visits are performed for all homes certified.

Tasks:

- New Member Orientations
- Continuing Education for builders at *Green Retrofit/Energy Retrofit* BSAG Workshops
- Meeting with builders/architects/subcontractors to explain the review process and receive project's submissions
- Hosting meetings of the *Green Retrofit/Energy Retrofit* Technical Advisory Committee (TAC) to confer about changes or updates to the program
- Input home data into BSAG home's database
- Meeting and/or conference with energy rater at construction site for initial energy audit where applicable
- Site observations to verify BSAG requirements compliance
- Collection of post-construction documents
- New program development and implementation
- Issue of BSAG certification upon requirements' compliance
- Homeowner education through BSAG Homeowner's Manual

Deliverable(s):

- Five hundred (500) projects certified in the New Construction & Retrofit Program(s)

2.) Develop and host Green Open House Events for BSAG-Certified Homes

Build San Antonio Green help develop awareness and understanding about the availability of BSAG-certified green homes in San Antonio. In an effort to help ensure that homeowners understand the many unique features of newly constructed or renovated BSAG-certified homes, BSAG staff will conduct homeowner education classes in conjunction with builder members. Because many aspects of green buildings are dependent on behavioral factors, it is essential that those who inhabit high- performance homes have a complete understanding of their home's unique features and attributes. This will allow them to maximize their home's many efficient features and be more likely to save energy and water as well as maintain healthy indoor air quality.

Staff will work in conjunction with member builders, affordable housing providers, and other local entities in the development and execution of these events. Specific affordable and market-rate houses will be targeted for "Green Open House" events throughout the year. These events

will serve to both showcase specific green certified projects and also bring different entities in the housing sector together in a collaborative effort to support the local green building industry

Tasks:

- Meetings with partners and other agencies to coordinate “Green Open House” events
- Coordination with builders to find eligible homes
- Marketing and outreach to promote events
- Hosting “Green Open House” events in collaboration with local partners

Deliverable(s):

- At least two (2) meetings with partner agencies to coordinate events
- At least two (2) “Green Open House” events throughout the year

3.) Community Education:

BSAG will continue to reach out and educate the Community on the advantages of green building through educational workshops in an effort to encourage them to build green in San Antonio. These workshops will cover the Build San Antonio Green program specifically, educating the builders on each step of the process of certifying a home through the program as well as what specific construction practices must be followed in addition to other topics related to green building, such as solar energy, ENERGY STAR® for Homes, and specific techniques, practices, and materials. All workshops will present the Build San Antonio Green program as the best option for builders wishing to build green in San Antonio, and workshop topics will be tied into the program and its requirements.

The SA Next lecture series is an opportunity to showcase New Urbanism as it relates to the revitalization of Downtown, SA Tomorrow and the SA 2020 initiatives. It takes a look at what is coming next for our city from the leaders and innovators who are making the changes a reality.

Workshops:

- Workshops about topics in green building, tied to Build San Antonio Green

SA Next:

- Lecture Series Installments may focus on the following topics:
 - Energy and Water Efficiency and Sustainability
 - Infill Development
 - Urban Planning and the City’s Sustainability Plan
 - Transportation in a growing city
 - Green Space Alliance
 - Pop-up restaurants and the local Food Movement
 - Our emerging local Art and Music scene
 - Community Health Issues

Deliverable(s):

- Two (2) Green Building topics workshops
- Five (5) installments of SA Next Lecture Series

4.) Outreach Events:

BSAG will continue to educate the public about green building and the Build San Antonio Green program. Staff will encourage the public to ask their builder or remodeler if they are a member of the Build San Antonio Green program, and also why the BSAG program is the best choice for homeowners wishing to build or remodel a green home in San Antonio. This public education will be accomplished through appearances at events throughout the year.

Outreach Events:

- City of San Antonio's Earth Day Celebration
- City of San Antonio Historic Homeowners Fair

5.) Plan and Administer the COSA 2016 Green Building Awards

Build San Antonio Green works with our Partners to plan and administer the 2014 COSA Green Building Awards. The COSA Green Building Awards are an important service offered by the City of San Antonio to recognize noteworthy projects and innovations in the fields of green building and solar technology.

BSAG will plan and administer this event with specific tasks including the selection of a nomination committee; updating and refining the criteria for judges and selection of a judging committee; coordinating and managing the event and ceremony planning; and promoting the event and award ceremony.

Tasks:

- Selection of Nomination Committee
- Update and refine criteria for judges and assistance in selection of judging committee
- Coordinate and Manage Event Planning and Ceremony Operations
- Awards and Event Promotion

Deliverable(s):

- Selection of Nomination Committee Membership, committee meeting(s) with City staff and other stakeholders
- Selection of Judging Committee Membership, committee meeting(s) with City staff and other stakeholders
- MC event, manage PowerPoint presentations, invite media, manage seating, invite speakers, and handle event inquiries
- Marketing plan, promotions through various venues: e-blasts, presentations at various building industry meetings, committee meeting(s) with City staff and other stakeholders

6.) Solar Fest

Organize and hold annual Solar Fest. It is a free, fun, family event that acts as a one-stop information center for everything related to "going solar," energy efficiency, renewable energy, sustainability, CPS Energy rebates, federal tax credits, green job training, and green home

building. In order to capture the widest possible audience for the informational aspects of this festival we will include live music and entertainment making it attractive to a wide demographic.

Tasks:

- Selection of Date and Location
- Selection and Organization of presenting Vendors
- Coordination of Live Entertainment and Planning of Activities
- Marketing and Promotion of the Event
- Planning and Execution of Event

Deliverable(s):

- Solar Fest Event

7.) Green Home Tour

Located throughout the central San Antonio Corridor, the homes on this year's tour are an eclectic mix of historic, new construction, and retrofit. Tour goers will have the opportunity to see how beautiful design and efficient features blend seamlessly in each of these green homes. Each home is extremely energy and water efficient. As tour attendees visit these homes they will see energy efficient technologies and practices like home energy manager at work. This tour offers a unique opportunity to directly educate individuals who are receptive to the messages of green building, energy efficiency and water conservation.

Tasks:

- Selection of Date and Location
- Selection and Organization of educational Vendors
- Preparation and loading of content on mobile tour site
- Marketing and Promotion of the Event
- Planning and Execution of Event

Deliverable(s):

- Green Home Tour Event

8.) Bring Solar Home

Bring Solar Home is an initiative to encourage homeowners and business owners to go solar by providing three free solar estimates from local installers. We work with CPS Energy, local solar installers, and financial institutions to simplify the process of "going solar." We hope to increase the number of solar installations in San Antonio by bridging the gap between consumers and industry professionals and by educating the public about solar.

This program is currently under a program review and revision to increase its reach into the community and to assist in promoting CPS Energy distributed solar programs in order to promote affordable solar power options. Tasks and Deliverables will likely involve some form of the following:

Tasks:

- Expand lead generation to include all rooftop and community solar options
- Provide a resource for the public to find out information relating to CPS Energy options, rebates, and incentives.
- Connect to Certification Program to help homeowners assess if their home qualifies for Solar Options.

Deliverables:

- Re-launch New Version of Bring Solar Home
- Serve as Concierge Solar Service to Homeowners

TOTAL FUNDING REQUEST**\$ 85,000.00**

Through funding support of BSAG, the City of San Antonio and broader community benefit from less strain on utility supplies, infrastructure costs (including storm-water abatement in some cases), and from making a smaller impact on the burgeoning urban heat island effect through green building Strategies. Communities that consist of a high percentage of green built homes, businesses, and industries benefit from less expenditure on expanded infrastructure, thereby being able to encourage new growth with reduced cost related to servicing the growth. Certification of green homes also encourages the growth of green jobs in our community.

Benefits include reducing the peak load for CPS Energy's system. As energy rates increase, this program makes more financial sense than ever. The City Council's Green Roundtable has identified the Build San Antonio Green program as the preferred vehicle for providing these services. BSAG is also listed as a leading program in meeting future sustainable development goals, as identified in the SA 2020 plan. As our program grows we are also aligned to assist in meeting sustainability goals as outlined in the SA Tomorrow initiative. In addition, CPS Energy has identified residential green building through BSAG to be a very cost-effective energy conservation strategy.

BSAG Deliverables Breakout for COSA Operations Contract 2015-2016	
Task 1: Certifications through BSAG®	Budgeted
Deliverables	
1. Projects certified through BSAG® (400)	\$47,300.00
	\$47,300.00
Task 2: Develop & Host Green Open House Events f/BSAG Cert Homes	
Deliverables	
1. Meetings w/Partner Agencies to Coordinate Events (2)	\$100.00
2. Hold "Green Open House" Events (2)	\$1,000.00
	\$1,100.00
Task 3: Community Education	
Deliverables	
1. Builder Green Building Topics Workshops (2)	\$1,000.00
2. SA Next Lecture series (5)	\$5,000.00

	\$6,000.00
Task 4: Outreach Events	
Deliverables	
1. City of San Antonio Historic Homeowners Fair - August	\$300.00
2. COSA's Earth Day Celebration - April	\$300.00
	\$600.00
Task 5: Plan & Administer Annual Green Building Awards	
Deliverables	
1. Selection of Nomination Committee	\$200.00
2. Update & Refine Award Criteria/Assist in Judge Selection	\$400.00
3. Coordinate & Manage Event Planning/Ceremony Operations	\$4,000.00
4. Awards & Event Promotion	\$400.00
	\$5,000.00
Task 6: Solar Fest	
Deliverables	
1. Execution of the Event	\$10,000.00
	\$10,000.00
Task 7: Green Home Tour	
Deliverables	
1. Execution of the Event	\$5,000.00
	\$5,000.00
Task 8: Bring Solar Home	
Deliverables	
1. Re-launch Bring Solar Home Program	
2. Serve as Concierge Solar Service to Homeowners	\$10,000.00
	\$85,000.00

City of San Antonio

Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

None

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):



No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate [Section 2-43 of the City Code \(Ethics Code\)](#), ("conflicts of interest") by participating in official action relating to the discretionary contract.



Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:

Title: Director of
Communications
Company or D/B/A:
Build San Antonio Green

Date:

8-27-15

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



CERTIFICATE OF LIABILITY INSURANCE

METRO-2

OP ID: SE

Attachment 23 - FY 2016 Budget Ordinance (MM/DD/YYYY)

04/15/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Walthall, Sachse & Pipes, Inc 300 E. Sonterra #1100 San Antonio, TX 78258 Walthall, Sachse & Pipes, Inc		CONTACT NAME: Walthall, Sachse & Pipes, Inc PHONE (A/C, No, Ext): 210-384-0000 E-MAIL ADDRESS:		FAX (A/C, No): 210-384-0110
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Hartford Lloyds Ins. Co.		38253
		INSURER B : Western Surety		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

INSURED Metropolitan Partnership for Energy dba Build San Antonio Green 118 Broadway Suite 232 San Antonio, TX 78205	
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COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			65SBATP7502	05/03/2015	05/03/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			65SBATP7502	05/03/2015	05/03/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	65WBCZQ3925	05/24/2015	05/24/2016	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Crime/Fidelity			70831093	11/20/2014	11/20/2015	Crime 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of San Antonio PO Box 839966 San Antonio, TX 78283-3966	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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STATE OF TEXAS § PROFESSIONAL SERVICES AGREEMENT
§ BETWEEN THE CITY OF SAN ANTONIO
COUNTY OF BEXAR § AND THE FREE TRADE ALLIANCE

This Agreement is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager or designee pursuant to Ordinance No. 2015-09-10-_____ dated September 10, 2015, and the Free Trade Alliance San Antonio (hereinafter "FREE TRADE ALLIANCE"); collectively, the "Parties".

WHEREAS, CITY has appropriated certain funds from its General Operating Budget; and

WHEREAS, FREE TRADE ALLIANCE is a Texas, non-profit corporation comprised of individuals and community organizations such as the CITY, the Greater San Antonio Chamber of Commerce, the San Antonio Economic Development Foundation (the "EDF"), San Antonio Water System, Port San Antonio, Hispanic Chamber, HEB, Bexar County and CPS Energy.

WHEREAS, this organization constitutes a broad community network for the purpose of promoting San Antonio as the center of international trade; and

WHEREAS, it is in the best interest of the CITY to continue its contribution to this organization for the purpose of increasing international business activity (the "PROGRAM"); and

WHEREAS, CITY wishes to engage FREE TRADE ALLIANCE to carry out such PROGRAM; and

WHEREAS, CITY designates its Economic Development Department (hereinafter referred to as "Department") as the City department, acting for its City Manager, responsible for the evaluation and fiscal monitoring of the PROGRAM; NOW THEREFORE:

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. PURPOSE STATEMENT

1.1 The purpose of this Agreement is for FREE TRADE ALLIANCE to develop San Antonio as the center for global trade, to promote CITY's economic development investment objectives and to maximize international business opportunities for CITY through the North American Free Trade Agreement (hereinafter referred to as "NAFTA") region and other target countries around the world.

II. TERM

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

III. PERFORMANCE

3.1 FREE TRADE ALLIANCE, in accordance and in compliance with the terms, provisions and requirements of this Agreement, agrees to perform and provide all services as set forth in

Article IV (Scope of Work) of this Agreement. FREE TRADE ALLIANCE shall produce all documentation in the form of performance records and reports as required under the terms of this Agreement.

3.2 Modifications or alterations to Article IV (Scope of Work) may only be made pursuant to the prior written approval of CITY. FREE TRADE ALLIANCE shall notify CITY in writing of any event which could substantially delay the achievement of the Scope of Work as defined in Article IV.

IV. SCOPE OF WORK

4.1 FREE TRADE ALLIANCE agrees to provide the services described in Exhibit A, entitled "Scope of Services," to this Agreement, attached hereto and made a part of this Agreement, in exchange for the compensation described in Article VIII. Fees, Expenses and Billing.

4.2 All work performed by FREE TRADE ALLIANCE hereunder shall be performed to the satisfaction of CITY. The determination made by CITY shall be final, binding and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by FREE TRADE ALLIANCE, which is not satisfactory to CITY. CITY shall have the right to terminate this Agreement, in whole or in part, should FREE TRADE ALLIANCE's work not be satisfactory to CITY; 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.

V. PERFORMANCE RECORDS AND REPORTS

5.1 FREE TRADE ALLIANCE shall provide quarterly reports that provide detailed results of the Article IV. *SCOPE OF WORK* accomplishments for FY2016 to the Department, due 30 days after the end of the quarter.

5.2 FREE TRADE ALLIANCE shall produce a report of the annual economic impact of business generated through current or former IBDC participants, as well as other companies FREE TRADE ALLIANCE engaged that have established a presence in San Antonio. FREE TRADE ALLIANCE shall maintain accurate, current and complete governmental accounting records and supporting documentation for all expenditures of funds provided through this Agreement. FREE TRADE ALLIANCE shall retain such records, and any supporting documentation, for a minimum of five (5) years from the end of the Agreement period, or the period required by other applicable laws and regulations.

5.3 FREE TRADE ALLIANCE shall provide, to the Department, a copy of its annual audit report when presented to its Board of Directors. FREE TRADE ALLIANCE shall give CITY and or any of CITY's duly-authorized representatives, access to and the right to examine all books, accounts, records, audit reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by FREE TRADE ALLIANCE pertaining to this Agreement. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to terminate this Agreement. In the event of a CITY examination, FREE TRADE ALLIANCE shall reimburse the CITY for any expenditures that are not directly related to this Agreement and/or not supported by the proper documentation. FREE TRADE ALLIANCE will pay the cost of this examination if the variance of expenditures exceeds 3% of the funds disbursed by the CITY.

5.4 As often and in such form as CITY may require, FREE TRADE ALLIANCE shall furnish CITY such performance records and reports deemed by CITY as pertinent to matters covered by this Agreement.

5.5 Performance records and reports, as presented to the Executive Committee meetings, shall be submitted to the CITY Department by FREE TRADE ALLIANCE on at least a quarterly basis.

VI. PERSONNEL

6.1 Both the CITY and FREE TRADE ALLIANCE shall work together to accomplish their applicable tasks as outlined in the Scope of Work described in Article IV of this Agreement. Any work subcontracted to third parties pursuant to this Agreement must be pre-approved by CITY's Department Director (the "Director").

VII. COORDINATION WITH CITY

7.1 The Director, or his designee, shall have complete authority to transmit instructions, receive information and interpret the CITY's policies and decisions with respect to materials, elements and work pertinent to the CITY's services pursuant to this Agreement. Any contact with CITY officials shall be coordinated with the Director or his designee.

VIII. FEES, EXPENSES AND BILLING

8.1 In consideration of FREE TRADE ALLIANCE'S performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in Article IV (Scope of Work) of this Agreement, CITY agrees to pay FREE TRADE ALLIANCE an amount not to exceed ONE HUNDRED EIGHTY THOUSAND DOLLARS AND 0 CENTS (\$180,000.00).

8.2 CITY shall make payments to the FREE TRADE ALLIANCE in four (4) quarterly payments of FORTY-FIVE THOUSAND DOLLARS AND 0 CENTS (\$45,000.00) upon receipt, review and approval of the quarterly *Goals & Accomplishments Report*. CITY shall not be obligated or liable under this Agreement to any other party, other than FREE TRADE ALLIANCE, for payment of any monies, or provision of any goods or services.

8.3 No additional expenses by the FREE TRADE ALLIANCE or its sub-consultants shall be charged by the FREE TRADE ALLIANCE.

IX. LEGAL/LITIGATION EXPENSES

9.1 Under no circumstances shall the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY. FREE TRADE ALLIANCE must obtain the written approval of the CITY Attorney's Office before any funds received under this Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.

9.2 During the Term of this Agreement, if FREE TRADE ALLIANCE files and/or pursues an adversarial proceeding against CITY, such filing or pursuit shall constitute a material breach of Agreement terms and, at CITY's option, this Agreement and all access to the funding provided herein may be terminated.

9.3 FREE TRADE ALLIANCE, at CITY's option, may be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.

9.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by FREE TRADE ALLIANCE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

X. TERMINATION

10.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term, or earlier termination pursuant to any of the provisions hereof.

10.2 This Agreement may be terminated, in whole or in part, by CITY for:

- A. Neglect or failure by FREE TRADE ALLIANCE to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any amendment made hereto between CITY and FREE TRADE ALLIANCE; or
- B. Violation by FREE TRADE ALLIANCE of any of the provisions of this Agreement or of any rule, regulation or law to which FREE TRADE ALLIANCE is bound or shall be bound pursuant to the terms of this Agreement.

10.3 CITY shall send notice of default to FREE TRADE ALLIANCE, subject to the provisions in Article XIX (NOTICE). The FREE TRADE ALLIANCE shall have sixty (60) days from the notice of default to cure such default (the "Cure Period"), and no funds shall be distributed during the Cure Period.

10.4 If, at the end of the sixty (60) day Cure Period, such default has not been cured, CITY shall issue a signed, written notice of termination to FREE TRADE ALLIANCE specifying the effective date of termination and the applicable provisions to be terminated.

10.5 The FREE TRADE ALLIANCE shall return all such files, documentation, materials, reports, advertising materials or other work product applicable to this Agreement, as well as any unearned fees, as requested by CITY.

XI. INDEPENDENT CONTRACTORS

11.1 It is expressly understood and agreed to by the Parties to this Agreement that CITY is contracting with FREE TRADE ALLIANCE as an independent contractor. The Parties understand and agree that CITY shall not be liable for any claims which may be asserted by any third party against FREE TRADE ALLIANCE occurring in connection with services performed under this Agreement.

11.2 The Parties further understand and agree that neither Party has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XII. CONFLICT OF INTEREST

12.1 FREE TRADE ALLIANCE acknowledges that it is informed that the Charter of the CITY and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any Agreement with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a “prohibited financial interest” in a Agreement 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 Agreement or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any above-listed individual or entity is a subcontractor on a CITY Agreement, a partner or a parent or subsidiary business entity.

12.2 Pursuant to Section 12.1 above, FREE TRADE ALLIANCE warrants and certifies, and this Agreement is made in reliance thereon, that FREE TRADE ALLIANCE, its officers, employees and agents are neither officers nor employees of the CITY. FREE TRADE ALLIANCE further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY’s Ethics Code.

XIII. INSURANCE REQUIREMENTS

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

13.2 Prior to the commencement of any work under this Agreement, FREE TRADE ALLIANCE shall furnish a completed Certificate of Insurance to CITY’s Director and Risk Management Division at the addresses listed below in Article XIII, Section 13.7. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the CITY’s Director and Risk Management Division, and no officer or employee shall have authority to waive this requirement.

13.3 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 coverage and its limits when deemed necessary and prudent by the CITY’s Risk Manager based upon changes in statutory law, court decisions or circumstances surrounding this Agreement, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.

13.4 FREE TRADE ALLIANCE’s financial integrity is of interest to CITY; therefore, subject to FREE TRADE ALLIANCE’s right to maintain reasonable deductibles in such amounts as are approved by CITY, FREE TRADE ALLIANCE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at FREE TRADE ALLIANCE’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and

admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following:	Combined Single Limit 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
(a) Premises operation	
(b) Independent Contractors	
(c) Products/completed operations	
(d) Contractual liability	
4. Business Automobile Liability:	Combined Single Limit for Bodily injury and Property Damage: \$1,000,000 per occurrence
(a) Owned/Leased	
(b) Non-Owned	
(c) Hired Automobiles	
5. Professional Liability	\$500,000 per claim

13.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for 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). Upon such request by CITY, FREE TRADE ALLIANCE shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

13.6 FREE TRADE ALLIANCE agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Add an endorsement which names CITY and its officers, employees and elected representatives as additional insureds 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;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

13.7 FREE TRADE ALLIANCE shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7)

days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following addresses:

City of San Antonio
Economic Development Director
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Risk Management
P.O. Box 839966
San Antonio, Texas 78283-3966

13.8 If FREE TRADE ALLIANCE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, then CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of FREE TRADE ALLIANCE to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon FREE TRADE ALLIANCE'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 FREE TRADE ALLIANCE to stop work hereunder and/or withhold any payment(s) which become due to FREE TRADE ALLIANCE hereunder until FREE TRADE ALLIANCE demonstrates compliance with the requirements hereof.

13.9 Nothing herein contained shall be construed as limiting in any way the extent to which FREE TRADE ALLIANCE may be held responsible for payment of damages to persons or property resulting from FREE TRADE ALLIANCE's or its sub-consultants' performance of the work covered under this Agreement.

XIV. INDEMNITY

14.1 **FREE TRADE ALLIANCE COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE INCLUDING, BUT NOT LIMITED TO, PERSONAL BODILY INJURY, DEATH AND PROPERTY DAMAGE MADE UPON THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF FREE TRADE ALLIANCE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF FREE TRADE ALLIANCE AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT; ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES,**

OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. FREE TRADE ALLIANCE SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR FREE TRADE ALLIANCE KNOWN TO FREE TRADE ALLIANCE RELATED TO OR ARISING OUT OF FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT FREE TRADE ALLIANCE'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING FREE TRADE ALLIANCE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

14.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE IS AN INDEMNITY EXTENDED BY FREE TRADE ALLIANCE TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE; PROVIDED, HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF THE CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF THE CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE. FREE TRADE ALLIANCE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES IN CONNECTION WITH ANY SUCH INJURY, DEATH OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

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 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. CHANGES AND AMENDMENTS

16.1 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 FREE TRADE ALLIANCE and approved by CITY Council, as evidenced by a duly-authorized ordinance.

XVII. ASSIGNMENT

17.1 Any attempt to transfer, pledge or otherwise assign this Agreement without written approval shall be void *ab initio* and shall confer no rights upon any third person. Should FREE TRADE ALLIANCE attempt to assign, transfer, convey, delegate or otherwise dispose of all or any part of its right, title or interest in this Agreement without CITY's written approval, CITY may, at its option, terminate this Agreement and all rights, titles and interest of FREE TRADE ALLIANCE shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by FREE TRADE ALLIANCE or any termination hereof by CITY shall not release FREE TRADE ALLIANCE from any obligation under the terms of this Agreement, nor shall it relieve or release FREE TRADE ALLIANCE from the payment of any damages to CITY which CITY sustains as a result of such violation.

XVIII. ENTIRE AGREEMENT

18.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains 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 the same be in writing, dated subsequent to the date hereof, and executed by said Parties.

XIX. NOTICE

19.1 Except when the terms of this Agreement expressly provide otherwise, all notices, reports and deliverables to be given or made by FREE TRADE ALLIANCE to CITY pursuant to this Agreement shall be sent to:

City of San Antonio
Director, Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

or such place as may be designated by CITY from time to time in writing.

All notices reports, and documents required to be given or made by the CITY to FREE TRADE ALLIANCE pursuant to this Agreement shall be sent to:

Free Trade Alliance San Antonio
203 South St. Mary's Street
Suite 130 (1st Floor)
San Antonio, Texas 78205

XX. NO PERSONAL LIABILITY

20.1 No elected official, director, officer, agent or employee of CITY shall be charged personally or held contractually liable by or to FREE TRADE ALLIANCE under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution, of approval, or attempted execution of this Agreement.

XXI. GOVERNING LAW

21.1 This Agreement shall be governed by the laws of the State of Texas. Performance, venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

XXII. LEGAL AUTHORITY

22.1 The signatory of this Agreement for FREE TRADE ALLIANCE represents, warrants, assures and guarantees that (s)he has full legal authority to execute this Agreement on behalf of FREE TRADE ALLIANCE and to bind the FREE TRADE ALLIANCE to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

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

XXIV. SIGNATURES

24.1 FREE TRADE ALLIANCE and CITY for themselves, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained. This Agreement has been executed in triplicate originals this _____ day of _____, 2015.

AGREED TO BE EFFECTIVE October 1, 2015.

EXECUTED and **AGREED** to this the _____ day of _____, 2015 (the "Effective Date").

CITY OF SAN ANTONIO

FREE TRADE ALLIANCE

Lori Houston
Assistant City Manager

Name:
Title:

ATTEST:

Leticia Vacek
City Clerk

Approved as to Form:

City Attorney

EXHIBIT A: FREE TRADE ALLIANCE SCOPE OF SERVICES

1. FREE TRADE ALLIANCE shall promote the exports of products and services by San Antonio companies as the coordinating organization implementing the San Antonio Export Strategy. Goals and metrics for FY2016 include:

- a. Plan, coordinate and participate in 2 of the 8 trade shows listed in the research section, in agreement with and in cooperation with local Economic Development (ED) partners. The goal is to promote the export of local company's goods and/or services.
- b. Participate in 30 Business Retention and Recruitment (BRE) visits and make 24 referrals to the San Antonio Export Assistance Team SEAT. This metric will be based on the documentation submitted in *Salesforce* by providing a summary of the meeting and the communication in making the referral to SEAT members.
- c. Present at four annual briefings on export activities organized in collaboration with *Café Commerce*.
- d. Present at four annual briefings on export activities organized in collaboration with *Geekdom*.
- e. Present at two annual briefings on trade and community resources organized in collaboration with *Geekdom* for San Antonio - Mexico challenge participants.
- f. Document all activity in *Salesforce*.

2. FREE TRADE ALLIANCE will conduct research and engage subject matter experts to refine target countries/industries and formulate effective strategies to promote trade and exports. Goals and metrics for FY2015 include:

- a. Conduct a business survey to identify international aviation needs of the local business community based on current needs and anticipated needs within the next two years.
- b. Provide a monthly monitoring of Mexico's economic and political environment to identify any opportunities for our community's target industry sectors and relevant macro trends.
- c. Provide a one-page report after each export roundtable summarizing all relevant discussion points. This would also include all Ad Hoc committee meetings.
- d. Creation of a dashboard, to be updated monthly, based on agreed-upon trade and export variables (i.e., number of local companies engaged in foreign trade, increase in the number of relevant service providers, number of International Business Development Center (IBDC) participants, etc.). This dashboard will be published on both the Free Trade Alliance (FTA) website, as well as the *inSA* website.

- e. Develop research and subsequent report to determine local utilization of all *Exim Bank* program products to serve as a baseline for advocacy action listed in the advocacy section.
 - f. Identify at least 8 industry-centric trade shows relevant to our community's target industries and in the target countries based on the *Brookings Strategy* and the *SA Economic Development Strategy* results.
3. Foreign Trade Zone #80: FREE TRADE ALLIANCE shall market and promote the foreign trade zone program (the "FTZ") as part of business expansion and retention strategy. In addition, FREE TRADE ALLIANCE shall:
- a. Review marketing materials and modify as required with input from economic development partners.
 - b. Meet with a minimum of 5 new companies to educate and assist regarding use of the FTZ in addition to the BRE meetings.
 - c. Support the Department with the administration and marketing of FTZ #80. The administration shall include the: (i) preparation of the annual report and submission for review by the CITY by January 1, 2015, with final submission by the Department to the FTZ Board by February 14, 2015; (ii) preparation of any applications for site activation, subzone designation or change in boundaries; and (iii) scheduling of site visits and reports. All reports and applications shall be submitted to the CITY's Department for final review and approval before submission.
4. Casa San Antonio Program: FREE TRADE ALLIANCE shall continue to work with the *Casa San Antonio Program* (the "Casas") and CITY shall encourage the Casas to continue to refer eligible companies to the FREE TRADE ALLIANCE International Business Development Center ("IBDC"). Goals and metrics for FY2015 include:
- a. Support Casa San Antonio referrals to interested companies in trade with San Antonio.
 - b. Support incoming trade missions organized by government, business organizations or sector-specific industry groups in cooperation with Department/International Relations Office/Casa San Antonio and other economic development stakeholders; primarily in the areas of community resource coordinators and matchmaking.
5. Advocacy: FREE TRADE ALLIANCE shall provide advocacy support on foreign trade policies critical to trade, investment and logistics issues of importance to CITY.
- a. Free Trade Agreements: monitoring and agreed-upon advocacy actions in support of agreements that would benefit our region (i.e., Trans-Pacific Partnership (TPP), United States – European Union Free Trade Agreement, World Trade Organization activity, etc.).
 - b. Agreed-upon trade related issues relevant to the region (i.e., Exim Bank, border issues, etc.) during the "SA-to-DC" annual event in cooperation with CITY's Intergovernmental Relations/Department.

- c. Continue efforts to educate the local community on FTZ benefits, with the goal of increasing utilization of this federal program.

STATE OF TEXAS	§	AGREEMENT TO USE FUNDS OF
	§	
COUNTY OF BEXAR	§	THE CITY OF SAN ANTONIO

This Agreement ("AGREEMENT") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager or designee pursuant to Ordinance No. _____, dated _____ and San Antonio for Growth on the Eastside, Inc. ("SAGE"), a Texas non-profit corporation; collectively, the "Parties".

WHEREAS, the City Council (the "Council") of the CITY has recognized the community revitalization efforts and mission of SAGE to serve historically underutilized areas of the City; and

WHEREAS, in furtherance of these efforts, the Council expressed support for SAGE in its efforts to form a business assistance and community revitalization program for economic development purposes (the "Program"); and

WHEREAS, CITY has provided certain funds from its Inner City Incentive Fund (the "ICIF") and General Fund for use by SAGE as a one-time allocation from the CITY's adopted budget; and

WHEREAS, CITY designates its Center City Development and Operations, acting for its City Manager, responsible for the evaluation and monitoring of this AGREEMENT (hereinafter referred to as "CCDO"). The Department of Finance and other City departments will function in a supporting role; and

WHEREAS, CITY now wishes to engage SAGE in meeting such objectives and following such procedures as described in this AGREEMENT and in **ATTACHMENT I** of this Contract pursuant to the Program; **NOW THEREFORE**:

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. GENERAL PROVISIONS

1. SAGE is a non-profit corporation governed by a Board of Directors with a mission of advocating and working for the area business community toward the building and sustaining of a diverse and prosperous economy.
2. SAGE, in furtherance of its mission, grants to small, diverse businesses that are unable to obtain full or partial financing through standard banking institutions.
3. SAGE agrees by the execution of this AGREEMENT to comply with any and all provisions of this AGREEMENT and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.
4. SAGE represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The signer of this AGREEMENT for SAGE represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of SAGE and to bind SAGE to all terms, performances and provisions herein contained.
6. In the event that a dispute arises as to the legal authority of either SAGE, or the person signing on behalf of SAGE, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, SAGE shall be liable to CITY for any money it has received from CITY for performance of any of the provisions herein.

7. SAGE understands that the funds provided pursuant to this AGREEMENT are funds which have been made available by CITY's ICIF fund and General fund and SAGE will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. SAGE and CITY agree that SAGE is an independent contractor, that SAGE shall be responsible to all Parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. SAGE understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either Party shall have the option of terminating this AGREEMENT by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either Party exercises the option of terminating this AGREEMENT, any and all unused funds either allocated and in possession of SAGE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to SAGE under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to SAGE.
10. SAGE understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, SAGE agrees that, at such time as any revisions are so made during the Term hereof, this AGREEMENT will be amended to include such revisions. In the event that SAGE does not agree to any changes, SAGE shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. SAGE shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
11. SAGE understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in the ICIF fund and/or General Fund expenditures, agreements funded by CITY's ICIF fund and/or General Fund, including this AGREEMENT may, at CITY's option, be reduced in a like manner. CITY will attempt to provide SAGE with as much advance notice of a potential funding reduction as is possible to allow SAGE to make budget adjustments.
12. In no event shall CITY be liable for any expense of SAGE not eligible or allowable hereunder.
13. Should SAGE fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director of the City's CCDO, or if SAGE should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to SAGE of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude CITY's termination right for successive breach of the same condition.
 - b. Notwithstanding the above, SAGE 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.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by ordinance that SAGE's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for SAGE to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
14. Should this AGREEMENT be terminated by either Party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT as determined solely by CITY after consultation with SAGE, SAGE shall refund unused funds either allocated and in possession of SAGE or

unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to SAGE under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to SAGE.

15. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2015 and shall terminate on September 30, 2016. This AGREEMENT may be renewed annually, for up to two (2) years, subject to appropriation of funds by City Council.
16. SAGE shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. CITY shall review, and SAGE shall allow review of, SAGE's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.
17. SAGE warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of SAGE or CITY.
18. SAGE may leverage funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's CCDO.
19. SAGE is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in this AGREEMENT and **ATTACHMENT I** and has contributed to the cause of realizing such objectives.
20. SAGE acknowledges that this AGREEMENT cannot be assigned without the express written consent of CITY's CCDO.
21. SAGE shall not use funds from this AGREEMENT for purposes other than those listed in Section II of this Contract without prior written consent of the CITY's CCDO.

II. SCOPE OF SERVICES

SAGE shall utilize up to three hundred fifty-eight thousand six hundred sixty-eight dollars and no cents (\$358,668.00) provided by CITY to SAGE for the funding or partial funding of SAGE in performing its mission on behalf of the CITY, to be used by SAGE in conformance with the approved budget in **ATTACHMENT II**. The aforementioned funds shall be paid as follows:

1. SAGE shall utilize up to one hundred thousand dollars and no cents (\$100,000.00) provided by CITY from its ICIF fund for the funding or partial funding of SAGE toward its Business Assistance and Community Investment Program, in compliance with **ATTACHMENT I**. All funds utilized shall be in compliance with the CITY's ICIF fund Guidelines and shall be used only for economic development purposes. These funds shall be advanced and distributed to SAGE in one amount, to be distributed soon after the effective date of a duly passed ordinance by the City Council of the City of San Antonio authorizing the execution of, and following the execution of, this AGREEMENT.
2. SAGE shall utilize up to two hundred fifty-eight thousand six hundred sixty-eight dollars and no cents (\$258,668.00) provided by CITY from its General Fund for the funding or partial funding of SAGE for any economic development purpose. All funds utilized shall be in compliance with the CITY'S EDIF Guidelines and shall be used only for economic development purposes. These funds shall be advanced and distributed to SAGE in one amount, to be distributed soon after the effective date of a duly adopted ordinance by the City Council of the City of San Antonio authorizing the execution of, and following the execution of, this AGREEMENT.
3. SAGE shall also fulfill the following requirements:

- a. SAGE shall provide CITY's CCDO with proper documentation verifying receipt of year 2015 and 2016 funding commitments from all other specified sources for SAGE, if any.
 - b. SAGE shall provide CITY's CCDO quarterly budget reports outlining contributions and expenditures (to include all sources of funding).
 - c. SAGE shall submit all required and requested documents to CITY's CCDO for proper review of SAGE expenditures and activities. Any requests for Fiscal Year 2017 funding must be submitted to CITY's CCDO by June 1, 2016.
4. The CITY's CCDO is assigned monitoring responsibility for this AGREEMENT. SAGE will provide City's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of SAGE's books, records and files on the objectives covered by this AGREEMENT. SAGE understands that CITY may require any and all books, records and files of SAGE necessary to ensure SAGE's compliance and use of generally accepted governmental accounting principles.
 - a. All such records shall continue to be available for inspection and audit for a period of five (5) years after the termination date hereof. However, if an audit or investigation of SAGE begins during the course of this five-year period, then SAGE is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. SAGE agrees that during the term of this AGREEMENT, any duly authorized representative of CITY's CCDO shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.
 - c. The submission of falsified information or the failure to timely submit all information by SAGE as requested by CITY is grounds for termination of this AGREEMENT.
5. SAGE agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. SAGE will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
6. SAGE agrees to establish internal procedures that ensure that employees funded or partially funded by this AGREEMENT have an established complaint and grievance policy.
 - a. Such grievance policy shall include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, SAGE shall follow the procedures outlined in the San Antonio Municipal Civil Service rules in regard to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
2. SAGE will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds under this AGREEMENT to assure separation of funds, unless otherwise approved by the CITY's CCDO.

3. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the Director of CCDO.
4. **To the extent allowed by law, SAGE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually 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 SAGE'S activities under this Agreement, including any acts or omissions of SAGE, any agent, officer, director, representative, employee, consultant or subcontractor of SAGE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or 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 SAGE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

5. Upon completion or termination of the objectives as described in this AGREEMENT, any unused funds, rebates or credits must immediately be returned by SAGE to CITY.
6. SAGE 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.
7. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, SAGE will immediately refund such amount to CITY. SAGE further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The CITY's CCDO has the express authority to deduct such claims from subsequent reimbursements.
8. **Audit Conditions and Requirements:**
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following 30 days after a written request by City, SAGE shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of SAGE read the entire AGREEMENT, including all attachments, between the CITY and SAGE, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.

- c. All CITY-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both SAGE and subcontractors related to this AGREEMENT.
 - d. If SAGE expends \$50,000.00 or more in General Fund dollars during the term of this AGREEMENT, then SAGE shall furnish the CITY'S CCDO and other City Departments designated by the CCDO with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of SAGE's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from SAGE stating whether or not the terms and conditions of the AGREEMENT were met. If the CITY determines, in its sole discretion, that SAGE is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have SAGE pay for such audit. In addition, when SAGE has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.
9. SAGE understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting.

IV. INSURANCE REQUIREMENTS

- 1. Prior to the commencement of any work under this AGREEMENT, SAGE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's CCDO, which shall be clearly labeled "San Antonio for Growth on the Eastside Agreement To Use Funds" 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 CCDO. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 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 coverage's 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.
- 3. SAGE's financial integrity is of interest to the CITY; therefore, subject to SAGE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, SAGE shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at SAGE's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent contractors	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	\$100,000
2. Directors and Officers (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 professional services.

4. SAGE agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of SAGE herein, and provide a certificate of insurance and endorsement that names the SAGE and the CITY as additional insureds. SAGE shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the AGREEMENT for all purposes.
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). SAGE 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. SAGE 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
6. SAGE 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 insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SAGE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend SAGE'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.

8. In addition to any other remedies the CITY may have upon SAGE'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 SAGE to stop work hereunder, and/or withhold any payment(s) which become due to SAGE hereunder until SAGE demonstrates compliance with the requirements hereof.
9. Nothing herein contained shall be construed as limiting in any way the extent to which SAGE may be held responsible for payments of damages to persons or property resulting from SAGE's or its subcontractors' performance of the work covered under this AGREEMENT.
10. It is agreed that SAGE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this AGREEMENT.
11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
12. SAGE and any Subcontractors are responsible for all damage to their own equipment and/or property.

V. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION POLICY

1. SAGE agrees to post in a conspicuous place available to employees and applicants for employment funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. SAGE will, in all solicitations or advertisements for employees placed by or on behalf of SAGE, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation.
3. Non-Discrimination. As a party to this AGREEMENT, SAGE 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.
4. SAGE agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. SAGE will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
5. In the event of SAGE's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and SAGE may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. SAGE further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;

- b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of SAGE on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of SAGE;
- c. No litigation or proceedings are presently pending or threatened against SAGE or, if pending, have been disclosed by SAGE in writing to CITY;
- d. None of the provisions contained herein contravene or in any way conflict with the authority under which SAGE is doing business, or with the provisions of any existing indenture or agreement of SAGE;
- e. SAGE has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
- f. None of the assets of SAGE are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by SAGE to CITY.

VII. LEGAL/LITIGATION EXPENSES

- 1. Under no circumstances will the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. SAGE must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.
- 2. During the term of this AGREEMENT, if SAGE files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if it is found that SAGE has violated this Article.
- 3. SAGE, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.
- 4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by SAGE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AMENDMENTS

- 1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof not involving the funding provided by City of SAGE under this Agreement shall be by administrative amendment in writing executed by the City Manager or her designee and SAGE. Any alterations, additions or deletions to the terms of this Agreement involving funding provided by the City to SAGE must be approved by City Council pursuant to a duly adopted ordinance.
- 2. It is understood and agreed by the Parties hereto 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.

IX. SEVERABILITY OF PROVISIONS

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 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.

X. NON-WAIVER OF PERFORMANCE

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 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 any 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.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

1. All SAGE invoices for eligible expenditures pursuant to this AGREEMENT must be submitted to City's CCDO by SAGE no later than ninety (90) days after SAGE incurs the expense.
2. SAGE understands and agrees that SAGE is required to refund money, pursuant to 80(R) HB 1196, that SAGE has received from CITY through this Agreement, in the event of SAGE's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

XII. ENTIRE AGREEMENT

This AGREEMENT constitutes the final and entire agreement between the Parties hereto and contains 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 hereof, and duly executed by the Parties.

XIII. NOTICE

1. For purposes of this AGREEMENT, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Director
Center City Development & Operations
P.O. Box 839966
San Antonio, Texas 78283-3966

SAGE:

Executive Director
San Antonio for Growth on the Eastside
220 Chestnut
San Antonio, Texas 78202

and

City Attorney's Office
Commerce & Visitor's Services Division
City Hall, 3rd Floor
San Antonio, Texas 78205

2. Notice of changes of address by any Party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other Party's last known address within five (5) business days of such change.

XIV. PARTIES BOUND

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

XV. GENDER

Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVI. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XVII. TEXAS LAW TO APPLY

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.

XVIII. CAPTIONS

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

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____ 2015.

CITY OF SAN ANTONIO

SAN ANTONIO FOR GROWTH
EASTSIDE

Carlos J. Contreras, III
Assistant City Manager

Jackie L. Gorman
Executive Director

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

ATTACHMENT I
Business Assistance and Community Investment Program

Business Assistance and
Community Investment Program (the "Program")
Utilizing Appropriated ICIF Funds

Fiscal Agent: SAGE – SAGE will maintain a separate checking account for ICIF funds
Potential Use of Funds for Economic Development Purposes:

1. Grants to businesses/projects

Process Flow of Funds:

Grant Program –

1. SAGE will identify grant opportunities for businesses or projects in the Eastside of San Antonio.
2. Once identified, grant is proposed to:
 - a. SAGE Grant Review Committee for recommendation to the SAGE Board of Directors
 - b. SAGE Board of Directors for Approval
 - c. If approved, grant is made to business/project under a Grant Agreement with performance measures.
 - d. SAGE disburses grant to designated/contracted recipient in accordance with the terms of the Grant Agreement.

Reporting

1. SAGE will provide quarterly reports on the use of these funds to include:
 - i. Number of Applications Received
 - ii. Number of Grants Awarded
 - iii. Name of Recipient Business, Description of Project and Dollar Amount of Grant
 - iv. Total dollar amount of grants awarded during the period
 - v. Total dollar amount of grants awarded during the life of the fund

ATTACHMENT II
Budget

**SAGE
FY2016 BUDGET**

SAGE

Operations (General Fund)	\$258,668.00
Façade Program (General Fund - Inner City Incentives)	\$100,000.00
TOTAL FY 2016 FUNDING	\$358,668.00

Operations (General Fund)

	Commitment Item	FY 2016 PROPOSED
5407030	Contrib to Other Agencies	\$258,668.00
CONTRACTUAL SERVICES		

Façade Program (General Fund - Inner City Incentives)

	Commitment Item	FY 2015 PROPOSED
5201040	Fees to Prof Contr.	\$100,000.00
CONTRACTUAL SERVICES		\$100,000.00

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

FUNDING AGREEMENT

SAN ANTONIO ZOOLOGICAL SOCIETY

This Agreement (the "Agreement") is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated September ____, 2015, and the San Antonio Zoological Society, (hereinafter referred to as "Zoo").

WITNESSETH:

WHEREAS, the Department of Parks and Recreation is designated as the managing City Department for the City; and

WHEREAS, the City has adopted a budget for expenditure of Hotel Occupancy Tax funds, and included therein is an allocation of \$306,597.00 in funds for the San Antonio Zoo (hereinafter referred to as "Project" or "Program");

NOW THEREFORE:

The parties hereto agree as follows:

1. The Zoo will operate and open to the public a zoo of a like quality and similar operating hours as it has historically done, and carry out all activities and services in a manner satisfactory to the Association of Zoos and Aquariums and in compliance with the budget submitted and attached as Exhibit A.
2. In consideration, the City will pay Zoo, as requested by Zoo from time to time for those certain expenditures set out in Exhibit A attached hereto an amount, which, in aggregate will not exceed the amount of \$306,597.00 (the "Funds").
3. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2015 and shall terminate on September 30, 2016.
 - (a) The Zoo understands that this Agreement will terminate as provided in this Section, and that there is no guarantee of renewal for the following fiscal year.
4. All Funds and accounts into which the Zoo may deposit the Funds will be subject to audit and review according to the City Operational Guidelines and City of San Antonio General Provisions. The City's Department of Parks and Recreation will have the authority to perform all such accounting functions or delegate all or part of the responsibility to the Zoo.
5. The Zoo shall be required to furnish the Parks and Recreation Department an audited financial statement for the budget line items funded by or through the City as set out in Exhibit A, prepared by an independent auditor (CPA) within one-hundred and twenty (120) days of the close of the Zoo's fiscal year or termination of this Agreement. In addition to the audited financial statements or program-specific audit(s), a copy of the management letter (Report on the Conduct of Audit) should be submitted.

The financial disclosure to be provided by the Zoo to the City under the terms of the Lease shall be deemed sufficient to meet this requirement, however, the financial statements must be accompanied by a schedule of receipts and disbursements by budgeted cost category for each of the line items to be funded by or through the City as listed in Exhibit A.

Zoo shall also ensure that a copy of the audited financial statements and any management letter be sent from the office of the independent auditor directly to the City of San Antonio, Office of the City Auditor with a copy to the Department of Parks and Recreation.

6. Payment and financial transactions shall be as follows:
 - (a) payments shall be made upon receipt of billing from the Zoo;
 - (b) Zoo agrees that all requests for reimbursement shall be accompanied with documentation stating where requested funds are allocated in Exhibit A, in a manner as may be reasonably required by the Department of Parks and Recreation;
 - (c) final request for payment must be submitted to the City not later than sixty (60) days after the contract end date;
 - (d) an accounting system which accurately reflects all costs chargeable (paid and unpaid) with the Funds is mandatory. A Receipts and Disbursements Ledger of paid invoices relating to the matters set out in Exhibit A must be maintained which will reflect paid invoices revealing check number, date paid and evidence of goods or services received;
 - (e) all records and files on matters funded by this Agreement will be open for inspection and audit at any reasonable time during the term hereof by representatives of the City or the State or Federal Government, and shall continue to be so available for a period of three (3) years after the termination date hereof. If at the end of three (3) years, there is litigation or if the audit report covering such Agreement has not been accepted, the Zoo shall retain the records until the resolution of such litigation or audit.
 - (f) City shall not be obligated to any third parties (including any subcontractors of the Zoo);
 - (g) Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given the Zoo for failure to comply with this Agreement. Specifically, the City may withhold reimbursements in cases where it determines that the Zoo is not in compliance with this Agreement.
7. The City's Department of Parks and Recreation is assigned monitoring, fiscal control, and evaluation of the Zoo's use of Funds as set out in Exhibit A. Therefore, at such times and in such form as may be required, the Zoo shall furnish such statements, records, data, and information and permit such interviews with personnel and board members pertaining to the matters covered by this Agreement.
8. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any audit, the Zoo will refund such amount to the City. The Zoo further authorizes the City to deduct such amount or charge as a claim against future payments.
9. The Zoo warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the sums to be paid under the terms of this Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
10. The Zoo agrees that neither the program nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or in any extent engaged in the conduct of political activities in violation of its tax-exempt status. Prohibited activities include, but are not necessarily limited to, the assignment by the Zoo of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities, to provide voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

11. The Zoo agrees that under no circumstances will the Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
12. The Zoo agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.
13. 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 Zoo and evidenced by passage of a subsequent City ordinance, as to City's approval.
14. The Zoo shall not assign or transfer the Zoo's interest in this Agreement without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person or party.
15. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY
 Director
 Department of Parks and Recreation
 P.O. Box 839966
 San Antonio, Texas 78283-3966

ZOO
 Executive Director
 San Antonio Zoological Society
 3903 N. St. Mary's Street
 San Antonio, Texas 78212-3199

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.

16. No elected official, director, officer, agent or employee of City or Zoo shall be charged personally or held contractually liable by or to the City or the Zoo under any term or provision of this Agreement, or because of any breach thereof, or because of its or this execution, approval, or attempted execution of this Agreement.
17. The Zoo will adhere to City of San Antonio policies and procedures, as they now exist or as they may subsequently be adopted, in all respects, so that Zoo's policies will be no more liberal than the City of San Antonio's policy and procedures. These are highlighted in Operational Guidelines and General Provisions for the City of San Antonio Funded Projects, and may be amended from time to time to reflect any subsequent Operational Guidelines and General Provisions incorporating City policies and procedures.
18. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

19. Should the Zoo fail to fulfill obligations under this Agreement in a timely and proper manner, and (i) it shall not correct any such failure within sixty (60) days following the date the City provides the Zoo of written notice of such violation, or (ii) if such default cannot be reasonably cured within sixty (60) days of such notice, if the Zoo has failed to begin to cure such matter within the sixty (60) day period and diligently pursue such cure thereafter, the City shall thereupon have the right to terminate this Agreement by sending written notice to the Zoo of such termination and specify the effective date thereof. The Zoo shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.
20. All of the work performed under this Agreement by the Zoo shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.
21. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
22. Non-Discrimination: As a party to this Agreement, the Zoo 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.
23. The signer of this Agreement for the City and the Zoo each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the City and the Zoo respectively, and to bind the City and the Zoo to all of the terms, conditions, provisions and obligations herein contained.
24. This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or agreements, either oral or written.

In witness of which this Agreement has been executed effective the _____ day of _____, 2015.

CITY OF SAN ANTONIO:

Janet A. Martin, Acting Director
Parks and Recreation Department

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

CONTRACTING AGENCY:

Tim Morrow, CEO/Executive Director
San Antonio Zoological Society

Exhibit A**San Antonio Zoo
City of San Antonio Grant
Proposed Uses Fiscal Year 2016****Marketing & Public Affairs**

Media Outlets	\$200,000
Production Cost	15,000
Brochures/Handouts	<u>20,000</u>

Membership Expense

Direct Mail	61,597
Magazine Expense	10,000

Total	<u>\$ 306,597</u>
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STATE OF TEXAS	§	AGREEMENT TO USE
	§	FUNDS OF THE
COUNTY OF BEXAR	§	CITY OF SAN ANTONIO

This Agreement to Use Funds ("AGREEMENT") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager or designee pursuant to Ordinance No. 2015-09-_____ dated September 10, 2015 and the Westside Development Corporation (the "WDC"), a Texas non-profit corporation; and collectively, the "Parties".

WHEREAS, the City Council (the "Council") of the CITY has recognized the community revitalization efforts and mission of WDC to serve historically underutilized areas on behalf of the City; and

WHEREAS, the *WDC Loan Program* (the "*Program*") is one of those efforts designed to provide loans to small businesses, not-for-profit organizations, landlords, developers, property owners and other entities involved in the revitalization of the West sector of the city, and applicants must demonstrate financial need, repayment ability, credit and capacity to manage pursuant to the *Program* Guidelines and Procedures in **ATTACHMENT III**; and

WHEREAS, CITY wishes to engage WDC in meeting such objectives and following such procedures as described in this AGREEMENT pursuant to its mission; and

WHEREAS, CITY designates its Center City Development Office (hereafter referred to as "CCDO") and its Director, (the "Director") to act for the City Manager in the evaluation and monitoring of this AGREEMENT, and work with the Department of Finance and other City departments, as appropriate; and

WHEREAS, CITY has provided certain funds from its General Fund, which have been budgeted for use by WDC to fund operations as a one-time allocation from the CITY's adopted FY 2016 budget; and

WHEREAS, CITY also desires to grant additional funds to WDC from its Inner City Incentive Fund (the "ICIF") for its *Program* for economic development purposes pursuant to CITY's Economic Development Program, authorized and approved by CITY in conformance with Chapter 380 of the Texas Local Government Code; **NOW THEREFORE:**

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

I. GENERAL PROVISIONS

1. WDC is a non-profit corporation governed by a Board of Directors with a mission of advocating and working for the area business community toward the building and sustaining of a diverse and prosperous economy.
2. WDC, in furtherance of its mission, provides loans, grants and other assistance to small, diverse businesses as part of its operations.
3. WDC agrees by the execution of this AGREEMENT to comply with any and all provisions of this AGREEMENT and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.
4. WDC represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The party signing this AGREEMENT for WDC represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of WDC and to bind WDC to all terms, performances and provisions herein contained.
6. In the event that a dispute arises as to the legal authority of either WDC, or the person signing on behalf of WDC, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, WDC shall be liable to CITY for any money it has received from CITY for performance of any of the provisions herein.
7. WDC understands that the funds provided pursuant to this AGREEMENT are funds which have been made available by CITY's General Fund and ICIF, and WDC will therefore comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. WDC and CITY agree that WDC is an independent contractor, that WDC shall be responsible to all parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. WDC understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either Party shall have the option of terminating this

AGREEMENT by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.

10. WDC understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, WDC agrees that, at such time as any revisions are so made during the Term hereof, this AGREEMENT will be amended to include such revisions. In the event that WDC does not agree to any changes, WDC shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. WDC shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
11. WDC understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund and/or ICIF expenditures, agreements funded by CITY's General Fund and/or ICIF, including this AGREEMENT may, at CITY's option, be reduced in a like manner. CITY will attempt to provide WDC with as much advance notice of a potential funding reduction as is possible to allow WDC to make budget adjustments.
12. In no event shall CITY be liable for any expense of WDC not eligible or allowable under this AGREEMENT.
13. Should WDC fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director,, or if WDC should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to WDC of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same, nor preclude CITY's termination right for successive breach of the same condition.
 - b. Notwithstanding the above, WDC 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.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this AGREEMENT at any time upon a finding by ordinance that WDC's activities, programs or operations no longer are in

the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for WDC to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.

14. Should this AGREEMENT be terminated by any Party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT, as determined solely by CITY after consultation with WDC, WDC shall refund any and all unused funds either allocated and in possession of WDC or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to WDC under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to WDC.
15. Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall begin on October 1, 2015 and shall terminate on September 30, 2016 (the "Term"). This Agreement may be renewed annually, for up to two (2) years, subject to appropriation of funds by City Council.
16. WDC shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent frauds and program abuse. CITY shall review, and WDC shall allow review of, WDC's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.
17. WDC warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage or contingent fee and further, that no such understanding or agreement exists, or has existed, with any employee of WDC or CITY.
18. WDC may leverage funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval of the Director.
19. WDC is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in this AGREEMENT and ATTACHMENTS I and II, and has contributed to the cause of realizing such objectives.
20. WDC acknowledges that this AGREEMENT cannot be assigned without the express written consent of the Director.
21. WDC shall not use funds from this AGREEMENT for purposes other than those listed in Section II of this Contract without prior written consent of the Director.

II. SCOPE OF SERVICES AND FUNDING

1. WDC shall utilize up to three hundred fifty eight thousand six hundred sixty eight dollars and no cents (\$358,668.00) provided by CITY from its General Fund for the funding or partial funding of WDC in performing its mission of supporting community revitalization in historically underutilized areas of the City on behalf of the CITY, to be used by WDC in conformance with its FY16 budget in **ATTACHMENT I**. These funds shall be paid as follows:
 - a. Up to two hundred fifty eight thousand six hundred sixty eight dollars and no cents (\$258,668.00) shall be paid by CITY from the General Fund to WDC in one installment following execution of this AGREEMENT to be utilized by WDC to undertake the Scope of Services set out in **ATTACHMENT II**.
 - b. Up to one hundred thousand dollars and no cents (\$100,000.00) shall be provided by CITY from its ICIF to WDC in one installment following execution of this AGREEMENT and a formal request for funding with an associated project list approved by the Director, to be utilized by for its *Loan and Grant Program (the "Program")* in conformance with the Guidelines and Procedures in **ATTACHMENT III**.
2. WDC shall utilize all funds in compliance with the CITY's funding priorities and WDC's economic development mission articulated in its enabling Ordinance and Articles of Incorporation approved by CITY. WDC shall also fulfill the following requirements:
 - a. WDC shall provide Director with proper documentation verifying receipt of fiscal year 2016, 2017 and 2018 funding commitments from all other specified sources for WDC, if any.
 - b. WDC shall provide Director with quarterly budget reports outlining contributions and expenditures, to include all sources of funding.
 - c. WDC shall submit all required and requested documents to CCDO for proper review of WDC expenditures and activities. Any requests for Fiscal Year 2017 funding must be submitted to the Director by June 1, 2016.
3. CCDO is assigned monitoring responsibility for this AGREEMENT. WDC will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of WDC's books, records and files on the objectives covered by this AGREEMENT. WDC understands that CITY may

require any and all books, records and files of WDC necessary to ensure WDC's compliance and use of generally accepted governmental accounting principles.

- a. All such records shall continue to be available for inspection and audit for a period of five (5) years after the termination date hereof. However, if an audit or investigation of WDC begins during the course of this five-year period, then WDC is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. WDC agrees that during the Term of this AGREEMENT, any duly authorized representative of CCDO shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.
 - c. The submission of falsified information or the failure to timely submit all information by WDC as requested by CITY is grounds for termination of this AGREEMENT.
4. WDC agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. WDC will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
 5. WDC agrees to establish internal procedures that ensure employees funded or partially funded by this AGREEMENT have an established complaint and grievance policy.
 - a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, WDC will follow the procedures outlined in the San Antonio Municipal Civil Service rules in regard to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
2. WDC will establish an account in a commercial bank as a depository for

receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds provided pursuant to this AGREEMENT to assure separation of funds, unless otherwise approved by the Director.

3. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the Director.
4. To the extent allowed by law, WDC covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually 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 WDC'S activities under this Agreement, including any acts or omissions of WDC, any agent, officer, director, representative, employee, consultant or subcontractor of WDC, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or 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 WDC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

5. Upon completion or termination of the objectives as described in this AGREEMENT, any unused funds, rebates or credits must immediately be returned by WDC to CITY.
6. WDC 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.

7. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, WDC will immediately refund such amount to CITY. WDC further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The Director has the express authority to deduct such claims from subsequent reimbursements.
8. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following thirty (30) days after a written request by City, WDC shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of WDC read the entire AGREEMENT, including all attachments, between the CITY and WDC, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.
 - c. All City-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both WDC and its subcontractors related to this AGREEMENT.
 - d. If WDC expends fifty thousand dollars and no cents (\$50,000.00) or more in funds provided by CITY during the Term of this AGREEMENT, then WDC shall furnish the Director and other City departments designated by the Director, with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of WDC's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review; audit exceptions and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from WDC stating whether or not the terms and conditions of the AGREEMENT were met. If the CITY determines, in its sole discretion, that WDC is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have WDC pay for such audit. In addition, when WDC has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this AGREEMENT, the audit shall be conducted in accordance with

the Single Audit Act Agreements of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.

9. WDC understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting.

IV. INSURANCE REQUIREMENTS

1. Prior to the commencement of any work under this AGREEMENT, WDC shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CCDO, which shall be clearly labeled "Westside Development Corporation Agreement To Use Funds" 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 Risk Manager. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
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.
3. WDC's financial integrity is of interest to the CITY; therefore, subject to WDC's right to maintain reasonable deductibles in such amounts as are approved by the CITY, WDC shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at WDC'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. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	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
2. Directors and Officers (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 professional services.

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

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

6. WDC agrees that with respect to the above-required insurance, such insurance policies are to contain or be endorsed to contain the following provisions:
 - Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the CITY of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, WDC shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend WDC'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.
8. In addition to any other remedies the CITY may have upon WDC'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 WDC to stop work hereunder, and/or withhold any payment(s) which become due to WDC hereunder until WDC demonstrates compliance with the requirements hereof.
9. Nothing herein contained shall be construed as limiting in any way the extent to which WDC may be held responsible for payments of damages to persons or property resulting from WDC's or its subcontractors' performance of the work covered under this AGREEMENT.

10. It is agreed that woe's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this AGREEMENT.
11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided ..
12. WDC and any WDC subcontractors are responsible for all damage to their own equipment and/or property.

V. EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. WDC agrees to post in a conspicuous place available to employees, applicants for employment and contractors funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. WDC will, in all solicitations or advertisements for employees or contractors placed by or on behalf of WDC, state that all qualified applicants will receive fair consideration for employment or contract without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, veterans status or political belief or affiliation.
3. WDC agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. WDC will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
4. In the event of WDC's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and WDC may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. WDC further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date

shown, shall not have undergone any significant change without written notice to CITY;

- b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of WDC on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of WDC;
- c. No litigation or proceedings are presently pending or threatened against WDC or, if pending, have been disclosed by WDC in writing to CITY;
- d. None of the provisions contained herein contravene or in any way conflict with the authority under which WDC is doing business, or with the provisions of any existing indenture or agreement of WDC;
- e. WDC has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
- f. None of the assets of WDC are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by WDC to CITY.

VII. LEGAL/LITIGATION EXPENSES

- 1. Under no circumstances shall the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. WDC must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.
- 2. During the term of this AGREEMENT, if WDC files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if it is found that WDC has violated this Article.
- 3. WDC, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.

4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by WDC in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AGREEMENTS

1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by agreement in writing executed by both CITY and WDC, as authorized by City Council and the Board of the WDC. Notwithstanding the foregoing, the Director may execute amendments that do not relate to the City's funding under this AGREEMENT.
2. 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.

IX. SEVERABILITY OF PROVISIONS

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 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.

X. NON-WAIVER OF PERFORMANCE

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 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 any 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.

2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

1. All WDC invoices or reports regarding eligible expenditures pursuant to this AGREEMENT must be submitted by WDC to the CCDO no later than thirty (30) days preceding the following quarter after WDC incurs the expense.
2. WDC understands and agrees that WDC is required to refund money, pursuant to 80(R) HB 1196, that WDC has received from CITY through this AGREEMENT, in the event of WDC's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

XII. ENTIRE AGREEMENT

This AGREEMENT constitutes the final and entire agreement between the Parties hereto and contains 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 hereof, and duly executed by the Parties.

XIII. NOTICE

1. For purposes of this AGREEMENT, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:
 Director
 Center City Development &
 Operations Office
 P.O. Box 839966
 San Antonio, TX 78283-3966

City Attorney's Office
 Commerce & Visitor's
 Services Division
 City Hall, 3rd Floor
 San Antonio, Texas 78205

and

WDC:

Executive Director
Westside Development Corporation
2300 West Commerce, Ste. 207
San Antonio, TX 78207-3839

2. Notice of changes of address by any Party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other Party's last known address within five (5) business days of such change.

XIV. PARTIES BOUND

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

XV. GENDER

Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVI. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

XVII. TEXAS LAW TO APPLY

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.

XVIII. CAPTIONS

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

EXECUTED IN TRIPLICATE ORIGINALS this _____ day of _____, 2015.

CITY OF SAN ANTONIO

**WESTSIDE DEVELOPMENT
CORPORATION**

Lori Houston
Assistant City Manager

Leonard B. Rodriguez
President

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:


Veronica M. Zertuche
Deputy City Attorney

ATTACHMENT I

City of San Antonio Westside Development Corporation
Budget for Fiscal Year Ending September 30, 2016

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y
						General Budget Fiscal Year 2016		City of San Antonio (Operations) (UR)		City of San Antonio (Projects) (TR)		City of San Antonio (WETC) (TR)		City of San Antonio (Little Italy) (TR)		San Antonio Housing Authority (San Juan) (UR)		San Antonio Housing Authority (Blueridge) (UR)		Strengthening Nonprofits (TR)		Fundraising (UR)		Business Assistance (UR)	
						Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget
1																									
2																									
3																									
4																									
5							70,000							15,000											55,000
6						0	30,000																30,000		
7						0	0																		
8						0	80,600																70,000		10,600
9						0	200,000																		200,000
10							858,668	258,668		100,000		500,000													
11						0	70,417									30,000		20,417					20,000		
12						0	0																		
13						0	0																		
14						0	0																		
15						0	0																		
16						0	0																		
17						0	1,309,685	0	258,668	0	100,000	0	500,000	0	15,000	0	30,000	0	20,417	0	0	0	120,000	0	265,600
18							100.0%		37.2%		0.0%		0.0%		0.0%		4.3%		2.9%		0.0%		17.3%		38.2%
19																									
20																									
21																									
22																									
23																									
24							840	313		0		0				36		25		0			145		321
25							1,500	559		0		0				65		44		0			259		573
26							2,340	871	0	0	0	0	0	0	0	101	0	69	0	0	0	0	404	0	895
27																									
28																									
29							12,000	4,468		0		0				518		353		0			2,073		4,588
30							8,899	3,314		0		0				384		262		0			1,537		3,402
31							22,800	8,490		0		0				985		670		0			3,938		8,717
32							35,000	13,032		0		0				1,511		1,029		0			6,046		13,382
33						0	78,699	0	29,304	0	0	0	0	0	0	3,399	0	2,313	0	0	0	0	13,594	0	30,089
34																									
35							35,000	13,032		0		0				1,511		1,029		0			6,046		13,382
36																									
37							4,745	1,767		0		0				205		139		0			820		1,814
38																									
39																									
40							24,555	9,143		0		0				1,060		722		0			4,242		9,388
41							24,555	9,143	0	9,143	0	0	0	0	0	1,060	0	722	0	0	0	0	4,242	0	9,388
42																									
43																									
44							5,000	1,862		0		0				216		147		0			864		1,912
45							5,000	1,862		0		0				216		147		0			864		1,912
46							17,300	6,442		0		0				747		508		0			2,988		6,614
47							5,522	2,056		0		0				238		162		0			954		2,111
48							10,793	3,996		0		0				463		315		0			1,854		4,103
49							10,000	3,724		0		0				432		294		0			1,727		3,823
50																									
51						0	58,554	0	19,941	0	0	0	0	0	0	2,313	0	1,574	0	0	0	0	9,251	0	20,476
52																									
53							4,500	1,676		0		0				194		192		0			777		1,720
54							500	186		0		0				22		15		0			86		191
55							1,500	559		0		0				65		44		0			259		573
56						0	6,500	0	2,420	0	0	0	0	0	0	281	0	191	0	0	0	0	1,128	0	2,485
57																									

City of San Antonio Westside Development Corporation
Budget for Fiscal Year Ending September 30, 2016

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	
1						General Budget Fiscal Year 2016		City of San Antonio (Operations) (UR)		City of San Antonio (Projects) (TR)		City of San Antonio (WETC) (TR)		City of San Antonio (Little Italy) (TR)		San Antonio Housing Authority (San Juan) (UR)		San Antonio Housing Authority (Blueridge) (UR)		Strengthening Nonprofits (TR)		Fundraising (UR)		Business Assistance (UR)		
2	FUND							Operations		Project		Project		Project		Operations		Operations		Operations		Operations		Operations		
3						Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	
58	Office																									
59	Postage, Mailing Service						600		223		0		0		0		26		18		0			104		229
60	Supplies						3,000		1,117		0		0		0		130		88		0			518		1,147
61	Business Meals						1,440		536		0		0		0		62		42		0			249		551
62	Software Lic./Subscriptions						3,200		1,192		0		0		0		138		94		0			553		1,224
63	Mileage/Parking						360		134		0		0		0		16		11		0			62		138
64	Total Office					0	8,600	0	3,202	0	0	0	0	0	0	0	371	0	253	0	0	0	0	1,486	0	3,288
65																										
66	Payroll																									
67	FICA						19,079		7,104		0		0		0		824		561		0			3,296		7,295
68	TWC																									
69	Wages						249,400		92,865		0		0		0		10,770		7,330		0			43,081		95,354
70	Total Payroll					0	268,479	0	99,969	0	0	0	0	0	0	0	11,594	0	7,891	0	0	0	0	46,377	0	102,648
71																										
72	Staff Development / Training						1,000		372		0		0		0		43		29		0			173		382
73																										
74	Travel/Conference/Meetings						4,000		1,489		0		0		0		173		118		0			691		1,529
75																										
76	Website						150		56		0		0		0		6		4		0			26		57
77	Total Management/Admin Expense					0	487,622	0	181,568	0	0	0	0	0	0	0	21,058	0	14,331	0	0	0	0	84,232	0	186,434
78																										
79	PROGRAM																									
80	Advertising/Promotion						5,000																		5,000	
81	Capital Improvements (WETC)						500,000					500,000														
82	Consultant						21,250								20,000						1,250					
83	Dues & Fees						200																		200	
84	Event Expense						11,000								5,000										6,000	
85	Grants						20,000				20,000															
86	In-Kind Expense						0																			
87	Loans						80,000				80,000															
88	Payroll Expense																									
89	FICA						5,134																		5,134	
90	TWC																									
91	Wages						67,106																		67,106	
92	Overtime						7,200																		7,200	
93	Software License/Subscriptions						7,164															7,164				
94	Staff Development / Training						16,000															7,000			9,000	
95	Total Program Expense						740,054	0	0	0	100,000	0	500,000	0	25,000	0	0	0	0	0	0	15,414	0	0	0	99,640
96																										
97	FUNDRAISING																									
98	Event Expense						30,000		26,994								1,210		1,209					587		0
99	Total Fundraising Expense						30,000	0	26,994	0	0	0	0	0			0	1,210	0	1,209	0	0	0	587	0	0
100																										
101	Total Expenses						1,257,676	0	208,562	0	100,000	0	500,000	0	25,000	0	22,268	0	15,540	0	15,414	0	84,819	0	0	286,074
102																										
103	Net Profit / Loss						52,009	0	50,106	0	0	0	0	0	0	(10,000)	0	7,732	0	4,877	0	(15,414)	0	35,181	0	(20,474)

ATTACHMENT II

Attachment II

Scope of Work

In accordance with an agreement to use funds between the **City of San Antonio ("City")** and the **Westside Development Corporation ("WDC")** to support community revitalization efforts and mission of the WDC to serve historically underutilized areas on behalf of the City, the following scope of activities will be undertaken by the WDC:

WDC Loan Program: Administer loan program in WDC target area utilizing EDIF allocation from COSA. Loan program targets small businesses, not-for-profits, landlords, developers, property owners and other entities involved in the revitalization of the West sector of the city.

- *Tasks:* Review and possibly update loan guidelines and policy
- *Annual Investment:* Percentage of \$100,000 allocation to be determined in 1st quarter.
- *Goal:* Execute loan agreements equal to 100% of agreed-upon allocation by 4th quarter.

WDC Grant Program: Administer grant program targeting small businesses, not-for-profits, landlords, developers, property owners and other entities involved in the revitalization of the West sector of the city.

- *Tasks:* Review and possibly update grant guidelines and policy
- *Annual Investment:* Percentage of \$100,000 allocation to be determined in 1st quarter.
- *Goal:* Execute grant agreements equal to 100% of agreed-upon allocation by 4th quarter.

WDC Retention and Attraction: Provide general consultation to existing businesses seeking to expand or relocate within the WDC target area. Market available sites to desired retail, service and employer industries.

- *Tasks:* Ongoing consultation services including Interior/Exterior Concept Development, Priority of Key Sites, Coordinated Interaction with Development Services, Community Outreach on behalf of Businesses, and Referrals to Relevant Service Providers.
- *Goal:* Service approximately 50 businesses annually.

Enrique M. Barrera Parkway Revitalization: Administer grant program targeting businesses and not-for-profit organizations on Enrique M. Barrera Parkway.

- *Tasks:* Development of grant application, process, policy and guidelines. Target businesses for participation.
- *Annual Investment:* Percentage of \$100,000 allocation to be determined in 1st quarter.
- *Goal:* Execute grant agreements equal to 100% of agreed-upon allocation by 4th quarter.

Fredericksburg Road Revitalization: Produce a commercial revitalization plan for Fredericksburg Road between IH-10 and North Flores Street.

- *Tasks:* Complete SWOT analysis, Market analysis, Branding plan, and Finance plan.
- *Goal:* Market analysis 1st qrtr; SWOT analysis 1st – 2nd qrtr; Marketing plan 3rd qrtr; and Master/Finance plan 4th qrtr.

Small Business Technical Assistance: Administer technical assistance program in support of micro- and small-businesses in the West sector of the city.

- *Tasks:* Continue to market and recruit new business to participate in the BCBU program; Host monthly technical assistance workshops; Incorporate SCORE offices into WDC offices.
- *Goal:* Recruit 20 new businesses into the BCBU – 1st through 4th qrtr. Host 12 technical assistance seminars annually – 1st through 4th qrtr.

ATTACHMENT III

WDC LOAN PROGRAM

Guidelines and Procedures

WDC LOAN PROGRAM
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A. GENERAL INFORMATION

1. Program Purpose and Objective
2. Ineligible Businesses
3. Who May Apply
4. Eligible Area
5. Entrepreneur Training

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1. Application Forms
2. Review of Application
3. Management/Feasibility Assessment
4. Assignment of Loan Officer
5. Lending/Credit Criteria

C. REVIEW, ANALYSIS, AND APPROVAL PROCESS

1. Brief Memo Prepared by Staff
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D. FUNDING PROCESS

1. Loans may be leveraged with SABDF, lenders, etc.
2. Closing Documents Prepared by Attorney & Title Company

E. LOAN SERVICING

1. Account Management
2. Credit Management
3. Problem Loans
4. Delinquent Loans
5. Loans in Default

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1. Loan Application Flowchart
2. Loan Purpose, Amounts, Terms, Rates
3. Loan Fees, Collateral, Financial Information
4. Inner City Lending Guidelines
5. Letter of Decline

WDC LOAN PROGRAM

A. General Information

1. Program Purpose and Objective

The Westside Development Corporation recognized that the West Sector has been identified and assessed as an area that is in need of revitalization.

WDC therefore feels that is most urgent to fill the void that is not being served by the present city, state, and federal loan programs or conventional financing.

Revitalization of West sector of the City will require new and innovative financing methods. It is proposed that WDC make loans for projects in those areas of the city at/or below market interest rates.

Not-for-Profit organizations are presently excluded from borrowing money under existing federal loan programs. These organizations would become eligible under this program if their projects are for revitalization in the target area.

Landlords, developers and property owners that are now only eligible under the HUD Enterprise Loan Program would be eligible under this program if the project is for revitalization of the West Sector of the city and the developer lacks the ability to obtain this credit elsewhere.

2. Ineligible Businesses

Lending, illegal activity, gambling, pyramid, networking sales, businesses who serve liquor (do not generate over 50% of their income from food sales) and media or publishing businesses that print opinions.

3. Who May Apply

Applications will be accepted from small businesses, not-for-profit organizations, landlords, developers, property owners and other entities involved in the revitalization of the West sector of the city. All applicants must demonstrate financial need, repayment ability, credit and capacity to manager.

4. Ineligible Use of Proceeds

WDC LOAN PROGRAM will not be used for the following loan purposes:

- a. Pay off creditors who are inadequately secured and in a position to sustain a loss.

- b. Distribution or payment to owner-partners or shareholders of the applicant or affiliated entities of same. Personal loans of owners or stockholders may not be included as part of the loan.
- c. Moving a business outside of the WDC-defined areas.

5. Eligible Area

The intent of the **WDC LOAN PROGRAM** is to serve the areas on the West sector of the city.

B. APPLICATION PROCESSING

1. **Application Forms** – Interviews will be made by the WDC Loan Officer and staff, as appropriate. The application will be provided upon request.
2. **Review of Application** – The assigned loan officer will be responsible for tracking applicants and applications.
3. **Management/Feasibility Assessment** – A management assessment will be made by WDC.
4. **Assignment to Credit Analyst** – The completed loan applications will be screened by a WDC Loan Officer and staff.
5. **Lending/Credit Criteria** – The financial condition of the company and its owners will be considered; particularly, their ability to meet the repayment schedule. The company's potential for growth and the owner's ability to meet personal obligations will also be considered. The credit criteria will be as follows:
 - a. Repayment of the loan must exist. Debt service coverage of at least 1:1 may be accepted. Projections may be accepted as repayment when past history does not support repayment.
 - b. Collateral must be 1:1 or better – WDC will require a first lien on purchased assets or existing unencumbered assets of the business, the borrower and/or the guarantor. WDC may also require a second lien on encumbered assets of the company, the borrow and/or guarantor.

- c. Assets being purchased will be given 100% values; existing assets will be given market value or cost which ever is lower. Also, assets minus depreciation may be accepted as that value rather than cost or market.
- d. A minimum of 10% cash/equity investment is required on existing businesses and a minimum of 20% cash/equity investment will be required on start-up businesses. A higher equity position may be required.
- e. A guarantor or co-maker may be required. The borrower's and guarantor's credit history will be evaluated; and explanations required from the borrower(s) on any credit issues.

C. REVIEW, ANALYSIS, AND APPROVAL PROCESS

1. Loan Report

WDC Staff will prepare a Loan Report.

2. Loan Approval

The WDC Loan Officer and Loan Development Manager will review the loan report and provide a recommendation of either "approve" or "decline" to the WDC staff. That recommendation will be presented to the appropriate Committee or Board of WDC for consideration and loan decision.

3. Approval Letter of Commitment

The client must sign the "Commitment Letter", followed by the signature and approval of the Loan Officer.

D. FUNDING PROCESS

- 1. Where possible, WDC loans will be leveraged with WDC, CDLF, ACCION, and/or other lenders.
- 2. Preparation of Closing Documents (Legal costs may be rolled into loan)

An attorney contracted by WDC must prepare all closing documents. The loan may be closed by the same attorney or by a WDC loan officer. A WDC Loan Officer must attest the documents.

A Title Company must be used in the closing of all real estate loans and a Mortgagee Title Policy obtained on all real estate secured loans.

E. LOAN SERVICING**1. Account Management**

Loan Serving staff is responsible for monitoring the loan portfolio, processing monthly loan payments, and responding to the needs of the borrow.

For each loan, Loan Servicing will provide the following services:

- a. Monthly accounting reports of principal and interest received, balances remaining and any fees charges.
- b. Late payment notices to borrower.
- c. Year-end statements to borrower showing interest and principal payment made.
- d. Maintenance of a database for monitoring and following up of UCC filings, insurance, financial statements or other requirements as stated in the loan approval.
- e. Any other record keeping or services required by the WDC for management of the account.

2. Credit Management

To assure the WDC loans are managed and serviced in accordance with the SRBF standards, and in accordance with the program's objectives, programs administrator's staff will periodically report on all loans serviced to WDC staff. The WDC will review the information to determine if there has been compliance with terms of the loan AGREEMENTS.

Credit management will include:

- a. Insistence on receipt of quality financial statements.
- b. Insistence on regular and timely receipt of financial statements.
- c. A review of submitted financial information.
- d. Verification of financial data by phone and/or on site visits when warranted.

- e. Obtaining personal and business credit reports as part of the business proposal package review.
- f. Reviewing the "terms" of the loan AGREEMENT and other documents with borrower to assure complete understanding of borrower's obligations.
- g. Requiring annual, quarterly, or monthly financial statements from the borrower to assess the ongoing financial positions of business.
- h. When necessary, conduct technical assistance conferences with borrower to analyze business condition and financial position. If needed, additional technical assistance will be scheduled to mitigate potential problems with borrowers.
- i. When necessary, recommend borrower attend seminars or classes in business and/or accounting to improve management ability and repayment ability of borrower in conjunction with approval of loan application.

3. Problem Loans

To avoid problems with credit delinquency and possible losses, program administrator's staff along with WDC staff will review the borrowers, those factors that indicate loan payment deterioration.

Some of the danger signals include:

- a. Delinquency.
- b. Anticipated renewal request.
- c. Adverse financial trends.
- d. Incorrect or improperly prepared financial information.
- e. Overly optimistic P&L and Cash Flow statements.
- f. Failure to provide any requested information in a timely manner.
- g. Disappearance of collateral or other assets.
- h. Borrowers hesitant to permit WDC staff to visit business.

- i. Appearance of other creditors and credit inquiries.

4. Delinquent Loans

Loans become delinquent the day after the payment is due. Collection procedures may commence if payment is not made within 15 days following payment due date, or if the business exhibits some of the danger signals listed in the Problem Loan Section. The WDC loan officer will make a determination of the seriousness of the problem by a review of:

- a. Cooperation of borrower.
- b. Ability of debt service.
- c. Collateral value.
- d. Extent of borrower's involvement with other creditors.

Step 1: The cooperation of the borrower is assessed based on the borrower's willingness to meet with loan officer to identify the problem and reach a workable solution.

Step 2: The ability of debt service by the borrower will be determined based on re-evaluation of both historical and projected future cash flows.

Step 3: The collateral positions for the loan will be determined by verifying the value of collateral held, by actually locating the collateral and by reviewing its condition. Verification as to the correctness of UCC filings and other security instruments will also be made.

Step 4: The extent of the borrower's additional borrowing with other creditors will be determined through updated credit reports, trade checking, search of public record for liens and judgments, etc.

Step 5: If a workable solution to the loan delinquency results in a modification of terms and conditions to the original approval, the modification must be in writing, it must be signed by the borrower and it must be approved and signed by the loan officer.

5. Loans in Default

When no workable solution results from meeting with the borrower, the loan will be in default. Loans will be considered in default if any portion of a loan payment is more than sixty (60) days past due.

Staff will take the following actions:

- a. Notification to borrowers of default by registered mail.
- b. Borrower will be given thirty days to correct default.
- c. If default is not corrected within sixty (60) days, WDC staff will take any actions necessary to collect the loan balance. Such actions include, but are not limited to liquidating any collateral.
- d. If default is not corrected within one hundred eighty (180) days, the loan can be charged off. Loans that are secured by real estate as the primary collateral will be charged off after the collateral is liquidated.

Loan Application Flowchart

Application



Loan Officer & WDC Staff



Loan Development Manager & WDC Staff (as needed)



**Attorney for Loan Closing
(if approval)**



Funding

WDC LOAN PROGRAM

Loan Purpose:

Any legitimate business purpose including, but not limited to:

- Permanent Working Capital
- Seasonal Working Capital
- Fixed Assets Acquisition
- Leasehold Improvements
- Real Estate Equity Loans
- Business Start-Up Expenses

Loan Amounts:

- \$5,000 - \$250,000

Loan Terms: 12-120 months:

(WDC will consider a 15 or 20-year amortization with up to a 10-year call.)

Loans Rates:

Competitive Fixed Rates of net less than 2% and not more than 3% over current money center bank prime rate as quoted in the Wall Street Journal. The rate will be set on the date of funding.

Loan Fees:

An origination fee of 1% of the loan amount will be charged, in addition to a \$300 attorney fee, plus a maximum of an additional \$500 to cover other closing costs. All fee may be incorporated into the loan.

Collateral:

Collateral requirement can be as high as 100% loan-to-value. Accounts Receivable, Inventory, Equipment, Vehicles, Real Estate and Personal Guarantee may be required.

- Equipment and Real Estate will be valued at the lower of cost or appraised value.
- Vehicles will be valued at NADA (Blue Book) loan value.

Financial Information:

- Minimum of two (2) years' business statements or tax returns

- Recent interim financial statement (within 90 days)
- Projections – financial or cash budget
- Detailed business plan for all applicants (start-ups only)
- Current guarantor financial statement and tax returns – when required
- Credit report
- Lien Search

Underwriting Standards:

- The borrower must show adequate earnings to retire its obligations. The SBC shall have a debt service coverage of no less than 1:1 of historical earnings or projections.

Credit History:

- A credit score of 550 or more
- If no traditional credit history exists, the administrator may use its discretion.
- All outstanding judgments must be paid and all delinquent accounts need to be brought current.

Technical Assistance:

Existing businesses (2 yrs+) will be screened, primarily on the basics of historical financial performance, to determine the appropriate level of technical assistance needed.

Recommended technical assistance will consist of proposed 4-12 weeks Business/Entrepreneurial Training Program. The length of the training will depend on the demonstrated capabilities of the borrower or completion of an approved outside entrepreneurial program.

On-going Technical Assistance is recommended for start-up businesses for the first full year of operations.

Monitoring/Counseling may be conducted on a quarterly basis for start-up businesses and no less than semi-annually for existing businesses to compare actual results against the business plan or projections.

Westside Development Corporation Business Growth Grant Guidelines

The Westside Development Corporation (WDC) mission is to foster economic development, promote the development and redevelopment of real estate within its target area, create viable urban communities, and preserve the character, culture and history of the Westside.

The WDC Business Growth Grant Program is for businesses and non-profit social enterprises that need assistance to grow their business. A qualified business or social enterprise may be eligible for a matching grant of up to \$5,000 as defined in the "Use of Grant" section of the guidelines. Once a completed application is received the applicant will have a decision within 90 days.

Type of Grant

This is a matching grant program. Funds awarded through the program must be matched dollar for dollar (1:1) by the business owner.

Who Can Receive a Grant?

Grants are only given to business owners in our target zone. [Target Zone Map Link](#)

A business owner is a person or an entity, including social enterprises, who are doing business in the Westside area target zone, for the purposes of generating a profit.

The following businesses are ineligible to receive funding from the WDC Business Growth Grant program:

Lending, illegal activity, gambling, pyramid, networking sales, businesses who serve liquor (do not generate over 50% of their income from food sales) and media or publishing businesses that print opinions.

Use of Grant

The grant may be spent on these types of projects:

Only Owner-Occupied Eligible

- Façade Improvement
 - The façade improvement grant is specifically for improvements on commercial corridors within the Westside target zone area.
- Interior Renovations

All Businesses Eligible

- Equipment and/or Equipment Upgrades
- Technology and/or Technology Upgrades

Application Requirements

- Complete a WDC Grant Application
- Provide a project budget and task list
- Provide proof of availability of matching funds
- Project must be approved and permitted by proper governmental authorities

Grant Approval

1. WDC staff will review the grant application and all supporting documents and prepare a grant approval/denial recommendation.
2. The grant approval/denial recommendation will then be sent to the WDC Project Committee and Board of Directors for final approval or denial.

As grant funds may fluctuate from year to year, completed grant applications and awards will be made in the order received by the WDC staff. If more requests are received than there is available funding, those who are eligible but not awarded funds will be placed on a waitlist for when new funds become available.

Grant Agreement

All business owners who have an approved grant application will be required to sign a WDC Grant Agreement within 30 days of notification of grant award. If grant agreement is not executed by the deadline noted in the notification letter, the grant award will be rescinded and funds awarded to another eligible applicant.

The grant agreement will detail the following:

- Amount of grant
- Purpose of grant
- Required matching funds
- Dispersal requirements
- Any applicable reporting requirements
- Project completion timeline and/or date

Grant Dispersal

WDC Grant Funds will be dispersed to the business owner upon receipt of:

- Cancelled checks and paid invoices relevant to the approved grant project in an amount of up to \$5,000 or more dollars
- Any other reporting requirements designated in the signed grant agreement

WDC Program Success Promotion:

Program participants may have their participation in the WDC Business Growth Grant Program used for promotional purposes. Participants will have the option to opt-out of use of their story.

The Westside Development Corporation (WDC) reserves the right to alter and change these guidelines as needed based on available funding.

FY 2016 ARTS & CULTURAL AGENCY FUNDING

Attachment 28 - FY 2016 Budget Ordinance

Funding by Agency Category

FY 2016 Adopted Budget

Program/Agency Name	ADOPTED FY 2016
CULTURAL ARTS OPERATIONAL - LIVE PERFORMANCES	
Alamo City Opera Piccola	\$36,892
ARTS San Antonio	236,925
AtticRep	16,575
Ballet San Antonio	80,522
Cactus Pear Music Festival	63,600
Chamber Orchestra of San Antonio	20,842
Children's Chorus of San Antonio	108,799
Children's Fine Arts Series	28,002
Jump Start Performance Company	51,205
San Antonio Chamber Choir	11,275
San Antonio Choral Society	13,200
San Antonio International Piano Competition	12,650
San Antonio Metropolitan Ballet	39,600
SOLI Chamber Ensemble	16,575
Symphony Society of San Antonio	613,852
The Classic Theater of San Antonio	29,575
The Magik Theater	241,875
The Network for Young Artists	37,580
The Playhouse San Antonio	151,443
Woodlawn Theater	90,000
Youth Orchestras of San Antonio	178,475
Total Live Performances	\$2,079,462
CULTURAL ARTS OPERATIONAL - MUSEUMS	
Artpace, Inc.	\$269,500
Contemporary Art for San Antonio	188,000
Guadalupe Cultural Arts Center	332,600
San Antonio Children's Museum	160,000
San Antonio Museum of Art	347,025
Southwest School of Art	316,250
Witte Museum	558,000
Total Museums	\$2,171,375
CULTURAL ARTS OPERATIONAL - COMMUNITY GROUPS	
American Indians in Texas at the Colonial Missions	\$51,300
Bihl Haus Arts, Inc.	90,000
Centro Cultural Aztlan	109,800
Conjunto Heritage Taller	18,742
Dreams Fulfilled Through Music	13,750
Esperanza Peace and Justice Center	271,013
Gemini Ink	114,000
Musical Bridges Around the World, Inc.	66,108
San Anto Cultural Arts, Inc.	102,600
Say Si	218,750
Urban-15 Group	117,700
Total Community Groups	\$1,173,763

FY 2016 ARTS & CULTURAL AGENCY FUNDING

Attachment 28 - FY 2016 Budget Ordinance

Funding by Agency Category

FY 2016 Adopted Budget

Program/Agency Name	ADOPTED FY 2016
FESTIVALS	
International Accordion Festival	\$15,624
San Antonio Parks Foundation	18,393
San Antonio Library Foundation	46,558
Anuja San Antonio	8,234
SA Film Festival	2,711
Japan America Society of SA	1,589
Texas International Folk Dancers	1,959
Total Festivals	\$95,068
stART PLACE	
Moving Imagination	\$3,450
Carlina Storyteller	2,000
San Antonio Living History	6,400
San Antonio Contra Dancers	6,000
SA Chapter Delta Sigma Theta Sorority	9,500
LiftFund	10,000
Total stART Place	\$37,350
ARTIST REGRANTING	
National Association of Latino Arts and Culture	\$30,000
San Antonio Artist Foundation	30,000
Total Artist Regranting	\$60,000
Additional Arts Funding Allocations	
PROGRAM SUPPORT	
Mission Marquee Plaza/Travis Park	\$83,278
Texas A&M Funding Strategy	150,000
Total Program Support	\$233,278
Sister City	\$100,000
Technical Assistance	\$20,000
Total Additional Arts Agency Funding Allocations	\$353,278
Total FY 2016 Arts & Cultural Agencies Allocations	\$5,970,296
Other Staff Funding Recommendations¹	
OPERATIONAL SUPPORT	
The Opera of San Antonio	\$125,000
National Western Art Foundation (Briscoe Museum)	100,000
Total Other Funding	\$225,000

¹Allocations funded by FY 2016 Culture and Creative Development Department operating appropriations.

STATE OF TEXAS *

COUNTY OF BEXAR * ARTS AGENCY CONTRACT WITH (Name of Contractor)

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. **2015-09-10-xxx** dated September 10, 2015, and the (agency name), (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department for Culture and Creative Development is designated as the managing City department (hereinafter referred to as "DCCD") for the City; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

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

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

The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Program Statement, Performance Plan and Budget, affixed hereto and incorporated herein for all purposes as **Attachment I**.

Operational Support	Attachment I
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II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on October 1, 2015 and shall terminate on September 30, 2016.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.
- 2.3 Contractor understands that City will not distribute funds under this contract until Contractor has submitted all invoices and receivables required under the previous fiscal year's contract and City has approved said submittals. This does not excuse Contractor from complying with Section 8.6 requiring all documents and required deliverables be submitted within a period not to exceed thirty (30) days from the termination date of the Contract.

III. CONSIDERATION

- 3.1 In consideration, City will reimburse Contractor for expenses incurred in accordance with the budget(s) approved by City Council in Ordinance No. **2015-09-10-xxx**. Said budget(s) is (are) part of **Attachment I** to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount(s) as set forth in the table below:

Operational Support	\$	Attachment I
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- 3.2 The funding level of this Contract is based on the allocation awarded to DCCD by the City of San Antonio. The allocation is based on an appropriation for the **Operational Support** and DCCD's receipt of said allocation. The budget(s) to this Contract may be adjusted to correspond to the actual allocation awarded. If any of the funds received under this Contract are from the City's Hotel Occupancy Tax collections, it is the understanding of the Parties that the amount set forth in Section 3.1 may be adjusted at any time to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines.
- 3.3 Contractor understands and agrees that this is a contract to provide matching funds for funding already received by Contractor and that City shall have no obligation to provide any funds hereunder until Contractor has received the matching funds required by the Arts Funding guidelines. City requires sufficient evidence that matching funds are in place prior to making any payments under this Contract. It is the understanding of the Parties that the amount and the availability of matching funds are based on Contractor's operating budget that was established for Contractor during the Fiscal Year 2015 Funding Process.
- 3.4 Consequently, Contractor agrees to comply with the Special Provisions set forth in Article XVIII, below.

IV. PAYMENT

- 4.1 Prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall be financially stable and operate in a fiscally responsible and prudent manner, as determined at the sole discretion of City. Contractor shall provide any records requested by City that City deems necessary to make such a determination.
- 4.2 (A) Contractor agrees that this is a cost reimbursement contract and that City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in **Attachment I** of this Contract. In no event shall City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.
- (B) All funds received under this Contract shall be subject to the following payment schedule ("Disbursement Schedule"):

Disbursement Schedule			
October	January	April	September
30%	30%	30%	10%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Invoice support documents must be provided by 4:00 p.m. on the 10th of the Month as set forth in the Disbursement Schedule and must reflect the budget set forth in Attachment I.
- (3) Contractor must provide support documentation for prior payments before receiving further payment.
- (4) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment.
- (5) If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to invoicing, and submitting Contract Monitoring Reports and any

and all documents related to the contract, as determined by the sole discretion of the Executive Director of DCCD, funds not yet received under this Contract shall revert to a monthly reimbursement schedule, as determined by the Executive Director of DCCD, according to standard procedures followed by City's Finance Department.

- 4.3 The City Manager, Assistant City Manager or the Director of DCCD may make changes to the Funding Schedule when doing so is in the best interest of the City and/or serves to promote the tourism and visitor industry and such changes shall not necessitate an amendment to this Contract.
- 4.4 The Executive Director of DCCD may require the Contractor's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- 4.5 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of DCCD.
- 4.6 Contractor shall submit to City all final requests for payment no later than thirty (30) days from the termination date of this Contract, unless Contractor receives written authorization from the Executive Director of DCCD prior to such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.
- 4.7 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.8 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
 - (A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) adequate identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by City, financial information should be related to performance and unit cost data;
 - (E) procedures to minimize the time elapsing between the transfer of funds from City and the disbursement of said funds by Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with City;
 - (G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Contractor shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and
 - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and

Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.9 Contractor agrees to comply with the following check procedures :

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

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

(C) Checks issued by City to Contractor shall be deposited into the appropriate bank account no later than three (3) business days of Contractor's receipt of each such check, and shall never be cashed for purposes of receiving the face amount back. If such check(s) are not cashed within ninety (90) days from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. Upon cancellation of any outstanding check, if deemed appropriate by City, Contractor may be reissued such check but, if deemed by City not to be a valid expense, such check shall be immediately returned to City.

4.10 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency.

4.11 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to City.

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

4.13 Contractor must be designated as a 501(c)(3).

V. PROGRAM INCOME

5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. Contractor shall be permitted to retain such funds to be :

(A) Added to the Project and used to further eligible Project and/or Contractor objectives.

5.2 Contractor shall provide DCCD, through the Contract Monitoring Report, notice of activity that generates program income. Contractor shall provide detail in the Contract Monitoring Report of the type of activity, time, and place of all activities that generate program income.

- 5.3 Contractor shall fully disclose and be accountable to City for all program income. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.4 Contractor shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

VII. AUDIT

- 7.1
 - (A) If Contractor expends \$250,000.00 or more of City dollars, then during the term of this Contract, Contractor shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish DCCD
 - a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to Contractor in Article III. Section 3.1 of this Contract is \$250,000.00 or more, then Contractor further agrees to provide a line item in its budget for a financial statement audit prepared by an independent certified public accountant. If City determines, in its sole discretion, that Contractor is in violation of the above requirements, City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have Contractor pay for such audit from non-City resources.
 - (B) If Contractor expends less than \$250,000.00 of City dollars, then during the term of this Contract, Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.
 - (C) The audited financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through City and a certification from Contractor stating whether or not the terms and conditions of the Contract were met.
- 7.2 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DCCD within ten (10) days of Contractor's receipt of the report.
- 7.3 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of four (4) years. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except if

there is litigation or if the audit report covering such agreement has not been accepted, Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

- 7.4 City may, at its sole discretion, require Contractor to use any and all of City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and Contractor shall abide by such requirements.
- 7.5 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than ten (10) days from the date of notification of such disapproval or disallowance by City. At its sole option, DCCD may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. If DCCD elects to deduct such claims from subsequent reimbursements, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of Contractor and shall not be paid from any Project funds received by Contractor under this Contract.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 DCCD is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by DCCD, Contractor shall furnish to DCCD, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 Contractor shall submit to DCCD such reports as may be required by City, including the Contract Monitoring Report form, which is affixed hereto and incorporated herein as **Attachment II** preferably by electronic means. Said report is to be submitted to DCCD no later than 4:00 p.m. on the tenth (10th) day of month according to the schedule below.

Contract Monitoring Report Schedule			
1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
January 10 th	April 10 th	July 10 th	October 10 th

- 8.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the

list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.

- 8.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Executive Director of DCCD, unless required to do so by a court of competent jurisdiction. DCCD shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

- 8.5 City and Contractor agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Contractor agrees to execute all documents reasonably requested by City to enable City to utilize all such property.

- 8.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City.

- 8.7 Contractor shall provide to DCCD all information requested by DCCD relating to the Contractor's Board functions. Information required for submission shall include, but may not be limited to:

- (A) Roster of current Board Members including the terms of each Officer (name, title, address, telephone number, fax number and e-mail address);
- (B) Current Bylaws and Charter including any Amendments to Bylaws or Charter; and
- (C) Schedule of anticipated board meetings for current Fiscal Year.

In addition, Contractor shall maintain and provide to City upon written request:

- (D) Minutes of board meetings which if approved by the Contractors board will become part of the Contractors project records; and
- (E) Board Agenda, if requested must be submitted at least three (3) business days prior to each Board meeting.

- 8.8 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html> and any amendments thereto, as well as Texas Local Government Code Chapter 252 pertaining to Purchasing and Contracting Authority of Municipalities and Chapter 2254 pertaining to Professional and Consulting Services which can both be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Department for Culture and Creative Development, which shall be clearly labeled "Operational Support" 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 Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form 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 Contract until such certificate and endorsements have been received and approved by the City's Department for Culture and Creative Development. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

- (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
- (C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles ** if transportation of participants is conducted	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

- (D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). 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: Department for Culture and Creative Development
 PO Box 839966
 San Antonio, Texas 78283-3966

- (E) 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:
- Name the City and 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
 - 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;
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- (F) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor’s performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- (G) 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.
- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor’s or its subcontractors’ performance of the work covered under this Contract.
- (I) It is agreed that Contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- (K) Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

- 10.1 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’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 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.

- 10.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 10.3 CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.
- 10.4 Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.5 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.

XI. APPLICABLE LAWS

- 11.1 All of the work performed under this Contract by Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:
- worker's compensation;
 - unemployment insurance;
 - timely deposits of payroll deductions;
 - Occupational Safety and Health Act regulations;
 - Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
 - American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
 - City of San Antonio and Bexar County charter, ordinances and bond ordinances.

11.2 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. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.

11.3 Contractor warrants that all taxes, which Contractor may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes if applicable the filing of:

- Information on Tax Return form 990, 990N or 990T,
- Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and
- Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.

Contractor shall also maintain and submit to DCCD upon written request form 990, 990N or 990T.

11.4 Contractor understands that certain funds provided pursuant to this Contract have been made available by City and/or by Federal, State, or other granting entities. Consequently, Contractor must comply with all laws, rules, regulations, policies, and procedures applicable to those specific funds. For example, CDBG Contractors are required to follow applicable CDBG regulations. In addition, Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable:

- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
- (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
- (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
- (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
- (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".

11.5 All expenditures by Contractor or any of its subcontractors exceeding \$25,000.00 must be pre-approved in writing by DCCD. Furthermore, all expenditures by Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations including all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code which include groups of separate, sequential or component purchases, as such terms are defined in Section 252.001 of the Texas Local Government Code, exceeding a total cost of \$3,000.00 set forth in this Section.

XII. NO SOLICITATION/CONFLICT OF INTEREST

12.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

- 12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 12.5 Contractor acknowledges that it is informed that Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52(e) of the City Ethics Code. If Contractor is a business entity, Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. TERMINATION

- 13.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 13.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It

is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.

- 13.3 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 Contract. Specifically, at the sole option of City, Contractor may be placed on probation during which time City may withhold reimbursements in cases where it determines that Contractor is not in compliance with this Contract. Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.
- 13.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XI, Section 11.2 of this Contract, Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to City any remaining funds received from City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 7.5 of this Contract. The obligations of Contractor to return such funds to City in accordance with this Section, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 14.3 The prohibitions set forth in Article XIV., Sections 14.1 and 14.2 of this Contract include, but are not limited to, the following:
 - (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs

any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to DCCD. Contractor shall list the name and number of a contact person from DCCD on the statement that Contractor's personnel can call to report said violations.

- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.
- 14.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XV. PERSONNEL MANAGEMENT

- 15.1 Contractor shall promptly inform (within 5 business days) City of any key employee status changes, whether or not such positions are funded under this Agreement.
- 15.2 Contractor shall provide City with its hours of operation no later than October 31, 2015. Contractor shall promptly inform the City if any change is made to daily schedule.
- 15.3 Contractor shall have a salaried full-time or part-time manager (works at least 20 hours per week, compensated at least a federal minimum wage) who is responsible for the business management of the organization on staff at all times during the term of this Contract. Contractor shall supply such manager's job description at the time of contract negotiation.
- 15.4 Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 15.5 Contractor is permitted to pay its full time employees for the total number of holidays authorized by City Council for City employees. If Contractor elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.
- 15.6 Contractor agrees to include job titles in their invoice(s), and additionally must provide to City upon request any salary or range increase/decrease information for City funded personnel positions.
- 15.7 Contractor agrees that all copies of written job descriptions for City funded personnel positions will be filed in all individual personnel folders for each position in the organization.
- 15.8 Upon request, the Contractor agrees to provide City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 15.9 At the sole discretion of the Executive Director of DCCD, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
 - (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
 - (B) To serve as a juror;
 - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, mother, sister, brother, husband, wife or child, and other relatives, (including in-laws) if such other

relatives are actually members of the employee's household. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or

(D) To attend seminars or workshops;

- 15.10 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.
- 15.11 Contractors providing performance pay for City-funded employees must perform regular employee appraisals which shall be made available to City upon request.
- 15.12 Contractor's primary and secondary contacts for this Contract will be identified upon contract negotiation and herein will have the ability to access agency files in order to function seamlessly during the course of business with the City. Contractor shall notify the City upon any change in contact information within 5 business days of the change.

XVI. ADVERSARIAL PROCEEDINGS

- 16.1 Contractor agrees to comply with the following provisions:
 - (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity; and
 - (B) Contractor, at City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against City remains unresolved.

XVII. CITY-SUPPORTED PROJECT

- 17.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is "supported by the City of San Antonio's Department for Culture and Creative Development" and by utilizing the official DCCD logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 17.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 17.3 Contractor shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 17.4 If Contractor identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for reimbursement by City.
- 17.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 17.6 All City-supported events must take place within the City of San Antonio city limits.

XVIII. SPECIAL PROVISIONS

- 18.1 Indecency. The following is City's policy statement regarding material and/or performances funded under DCCD's Arts Agency Contracts:

(A) Contractor is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised. Contractor shall forward to the City a copy of the content of the notice to be displayed along with the notification required by Section 18.1(b).

(B) Contractor must make DCCD aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty (30) days prior to the actual activity.

(C) The City Council shall have the right to terminate this Contract upon finding that Contractor's activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

- 18.2 Tourism Impact. Contractor shall provide to City, prior to or at the time this Contract is executed, a list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry. Contractor may satisfy this requirement by submitting an existing calendar of events for the Contract period, provided that Contractor delineates which events on said calendar meet the specified requirements. Contractor shall update said list or calendar in the event of any modifications or additions.

- 18.3 Removal/Relocation. Contractor acknowledges that the location of the Project on City property may necessitate future removal or relocation that may subject the Project to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation of the Project, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in City's Unified Development Code, Article VI, Division 5, Section 35-656. Contractor agrees that a City decision made under this paragraph regarding if, when and how to remove the Project is final.

Contractor hereby expressly consents to both the installation and removal of the Project and thereby expressly waives his/her Moral Rights to the Project. It is agreed that if the Project, or any portion thereof, is removed from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, the Project may not thereafter be referred to as "a Project by Contractor".

XIX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 19.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XX. ASSIGNMENT

- 20.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXI. AMENDMENT

- 21.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of DCCD shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:
- (A) an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
 - (B) modifications to the Performance Plan set forth in **Attachment I** hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I** hereto;
 - (C) budget line item shifts of funds, so long as the total dollar amount of the budget set forth in Article III, Section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (**Attachment I**) of this Contract;
 - (D) modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of DCCD;
 - (E) adjustments to the funding awarded under this Agreement in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 21.1(a) above; and
 - (F) any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 21.1(A) and (E) above.
- 21.2 Any amendments to the Performance Plan must be made at least fifteen (15) days prior to any event being added to this Agreement by such amendment.
- 21.3 Any amendments to the Budget must be made at least fifteen (15) days prior to invoicing.

XXII. SUBCONTRACTING

- 22.1 Any work or services subcontracted hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

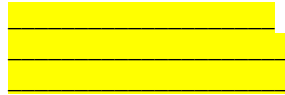
XXIII. OFFICIAL COMMUNICATIONS

- 23.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:

**City of San Antonio
Department for Culture and Creative Development
PO Box 839966
San Antonio, Texas 78283-3966**

Contractor:



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 prior to the change.

XXIV. VENUE

- 24.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXV. GENDER

- 25.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVI. AUTHORITY

- 26.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code Section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide DCCD verification of the foregoing requirements no later than the execution date of this Contract.

XXVII. INDEPENDENT CONTRACTOR

- 27.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible

therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.

- 27.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 27.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

XXVIII. SEVERABILITY

- 28.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIX. CONTRIBUTION PROHIBITIONS

- 29.1 Contractor acknowledges that City Code Section 2-309 applies to this Contract and provides that any person acting as a legal signatory for a proposed contractual relationship such as this one, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits their application for funding until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity.
- 29.2 Contractor acknowledges that this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXX. ENTIRE CONTRACT

- 30.1 This Contract and its attachments constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

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

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Felix Padrón
Executive Director
Department for Culture & Creative Development

xxxxxxxxxxxxx
Address xxxxx
San Antonio, TX 782xx

APPROVED BY:

Sheryl Sculley
City Manager

Authorized Signor

APPROVED AS TO FORM:

Print Name

City Attorney

Board President (if required by Agency)

ATTACHMENTS

- Attachment I. – Program Statement, Performance Plan & Budget
- Attachment II. – Contract Monitoring Report

Cultural Arts Operational up to \$24,999 (30-30-30-10)

Contract Number: 460000xxxx

STATE OF TEXAS *

COUNTY OF BEXAR * ARTS AGENCY CONTRACT WITH (Name of Contractor)

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as “City”), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2015-09-10-xxxx dated September 10, 2015, and the (agency name), (hereinafter referred to as “Contractor”).

WITNESSETH:

WHEREAS, the Department for Culture and Creative Development is designated as the managing City department (hereinafter referred to as “DCCD”) for the City; and

WHEREAS, City has provided certain funds from the Hotel Motel Tax Fund for the promotion of tourism and the convention and hotel industry through the encouragement, promotion, improvement, application and exhibition of the arts; and

WHEREAS, City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project(s) entitled Operational Support (hereinafter referred to as “the Project”); and

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

The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to City and in compliance with the Program Statement, Performance Plan and Budget, affixed hereto and incorporated herein for all purposes as **Attachment I**.

Operational Support	Attachment I
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II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on **October 1, 2015**, and shall terminate on **September 30, 2016**.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.
- 2.3 Contractor understands that City will not distribute funds under this contract until Contractor has submitted all invoices and receivables required under the previous fiscal year's contract. This does not excuse Contractor from complying with Section 8.6 requiring all documents and required deliverables be submitted within a period not to exceed thirty (30) days from the termination date of the Contract.

III. CONSIDERATION

- 3.1 In consideration, City will reimburse Contractor for expenses incurred in accordance with the budget(s) approved by City Council in Ordinance No. 2015-09-10-xxxx. Said budget(s) is (are) part of **Attachment I** to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount(s) as set forth in the table below:

Operational Support	\$	Attachment I
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Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- 3.2 The funding level of this Contract is based on the allocation awarded to DCCD by the City of San Antonio. The allocation is based on an appropriation for the **Operational Support** and DCCD's receipt of said allocation. The budget(s) to this Contract may be adjusted to correspond to the actual allocation awarded. If any of the funds received under this Contract are from the City's Hotel Occupancy Tax collections, it is the understanding of the Parties that the amount set forth in Section 3.1 may be adjusted at any time to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines.
- 3.3 Contractor understands and agrees that this is a contract to provide matching funds for funding already received by Contractor and that City shall have no obligation to provide any funds hereunder until Contractor has received the matching funds required by the Arts Funding guidelines. City requires sufficient evidence that matching funds are in place prior to making any payments under this Contract. It is the understanding of the Parties that the amount and the availability of matching funds are based on Contractor's operating budget that was established for Contractor during the Fiscal Year 2015 Funding Process.
- 3.4 Consequently, Contractor agrees to comply with the Special Provisions set forth in Article XVIII., below.

IV. PAYMENT

- 4.1 Prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall be financially stable and operate in a fiscally responsible and prudent manner, as determined at the sole discretion of City. Contractor shall provide any records requested by City that City deems necessary to make such a determination.
- 4.2 (A) Contractor agrees that this is a cost reimbursement contract and that City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in **Attachment I** of this Contract. In no event shall City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.
- (B) All funds received under this Contract shall be subject to the following payment schedule ("Disbursement Schedule"):

Disbursement Schedule			
October	January	April	September
30%	30%	30%	10%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Invoice support documents must be provided by 4:00 p.m. on the 10th of the Month as set forth in the Disbursement Schedule and must reflect the budget set forth in Attachment I.
- (3) Contractor must provide support documentation for prior payments before receiving further payment.
- (4) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

(5) If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to invoicing, and submitting Contract Monitoring Reports and any and all documents related to the contract, as determined by the sole discretion of the Executive Director of DCCD, funds not yet received under this Contract shall revert to a monthly reimbursement schedule, as determined by the Executive Director of DCCD, according to standard procedures followed by City's Finance Department.

- 4.3 The City Manager, Assistant City Manager or the Director of DCCD may make changes to the Funding Schedule when doing so is in the best interest of the City and/or serves to promote the tourism and visitor industry and such changes shall not necessitate an amendment to this Contract.
- 4.4 The Executive Director of DCCD may require the Contractor's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- 4.5 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of DCCD.
- 4.6 Contractor shall submit to City all final requests for payment no later than thirty (30) days from the termination date of this Contract, unless Contractor receives written authorization from the Executive Director of DCCD prior to such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.
- 4.7 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.8 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to City.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of DCCD may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.
- 4.11 Contractor must be designated as a 501(c)(3).

V. PROGRAM INCOME

- 5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. Contractor shall be permitted to retain such funds to be:
 - (A) added to the Project and used to further eligible Project and/or Contractor objectives.
- 5.2 Contractor shall provide DCCD, through the Contract Monitoring Report, notice of activity that generates program income. Contractor shall provide detail in the Contract Monitoring Report of the type of activity, time, and place of all activities that generate program income.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- 5.3 Contractor shall fully disclose and be accountable to City for all program income. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.4 Contractor shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

VII. AUDIT

- 7.1 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DCCD within ten (10) days of Contractor's receipt of the report.
- 7.2 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except if there is litigation or if the audit report covering such agreement has not been accepted, Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

- 7.3 City may, at its sole discretion, require Contractor to use any and all of City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and Contractor shall abide by such requirements.
- 7.4 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, Contractor will immediately refund such amount to City no later than ten (10) days from the date of notification of such disapproval or disallowance by City. At its sole option, DCCD may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by City. If

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. If DCCD elects to deduct such claims from subsequent reimbursements, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of Contractor and shall not be paid from any Project funds received by Contractor under this Contract.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 DCCD is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by DCCD, Contractor shall furnish to DCCD, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 Contractor shall submit to DCCD such reports as may be required by City, including the Contract Monitoring Report form, which is affixed hereto and incorporated herein as **Attachment II** preferably by electronic means. Said report is to be submitted to DCCD no later than 4:00 p.m. on the tenth (10th) day of month according to the schedule below in which the reported activities occurred as stated on the Performance Plan set forth in Attachment I.

Contract Monitoring Report Schedule			
1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
January 10 th	April 10 th	July 10 th	October 10 th

- 8.3 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 8.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Executive Director of DCCD, unless required to do so by a court of competent jurisdiction. DCCD shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- 8.5 City and Contractor agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Contractor agrees to execute all documents reasonably requested by City to enable City to utilize all such property.
- 8.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City.
- 8.7 Contractor shall provide to DCCD all information requested by DCCD relating to the Contractor's Board functions. Information required for submission shall include, but may not be limited to:
- (A) Roster of current Board Members including the terms of each Officer (name, title, address, telephone number, fax number and e-mail address);
 - (B) Current Bylaws and Charter including any Amendments to Bylaws or Charter; and
 - (C) Schedule of anticipated board meetings for current Fiscal Year.
- In addition, Contractor shall maintain and provide to City upon written request:
- (D) Minutes of board meetings which if approved by the Contractors board will become part of the Contractors project records; and
 - (E) Board Agenda, if requested must be submitted at least three (3) business days prior to each Board meeting.
- 8.8 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.4 of this Contract.

IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:
- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Department for Culture and Creative Development, which shall be clearly labeled "Operational Support" 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 Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form 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 Contract until such certificate and endorsements have been received and approved by the City's Department for Culture and Creative Development. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
 - (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
 - (C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
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Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

Broad Form Commercial General Liability Insurance to include coverage for the following: <ol style="list-style-type: none"> Premises operations Independent Contractors Products/completed operations Personal Injury Contractual Liability 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability <ol style="list-style-type: none"> Owne d/leased vehicles Non-owned vehicles Hired Vehicles ** if transportation of participants is conducted	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

(D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). 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: Department for Culture and Creative Development
 PO Box 839966
 San Antonio, Texas 78283-3966

(E) 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:

- Name the City and 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
- 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;
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

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

(G) 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

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

- 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.
- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.
- (I) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- (K) Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

- 10.1** **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'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 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.**
- 10.2** **The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 10.3** **CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.**
- 10.4** **Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City**

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX**

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.

- 10.5 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.**

XI. APPLICABLE LAWS

- 11.1** All of the work performed under this Contract by Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:
- worker's compensation;
 - unemployment insurance;
 - timely deposits of payroll deductions;
 - Occupational Safety and Health Act regulations;
 - Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
 - American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
 - City of San Antonio and Bexar County charter, ordinances and bond ordinances.
- 11.2** 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. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.
- 11.3** Contractor warrants that all taxes, which Contractor may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes if applicable the filing of:
- Information on Tax Return form 990, 990N or 990T,
 - Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and
 - Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.
- Contractor shall also maintain and submit to DCCD upon written request form 990, 990N or 990T.
- 11.4** Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - Texas Government Code Chapter 552 pertaining to Texas Public Information Act

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- Texas Local Government Code Chapter 252 pertaining to Purchasing and Contracting Authority of Municipalities and Chapter 2254 pertaining to Professional and Consulting Services which can both be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

11.5 Contractor understands that certain funds provided pursuant to this Contract have been made available by City and/or by Federal, State, or other granting entities. Consequently, Contractor must comply with all laws, rules, regulations, policies, and procedures applicable to those specific funds. For example, CDBG Contractors are required to follow applicable CDBG regulations. In addition, Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable:

- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
- (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
- (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
- (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
- (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".

XII. NO SOLICITATION/CONFLICT OF INTEREST

12.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or

- (B) Have any direct or indirect interest in this Contract or the proceeds thereof.

12.5 Contractor acknowledges that it is informed that Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the

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

- 12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52(e) of the City Ethics Code. If Contractor is a business entity, Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. TERMINATION

- 13.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 13.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 13.3 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 Contract. Specifically, at the sole option of City, Contractor may be placed on probation during which time City may withhold reimbursements in cases where it determines that Contractor is not in compliance with this Contract. Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.
- 13.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XI, Section 11.2 of this Contract, Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to City any remaining funds received from City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 7.4 of this Contract. The obligations of Contractor to return such funds to City in accordance

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with this Section, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 14.3 The prohibitions set forth in Article XIV., Sections 14.1 and 14.2 of this Contract include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to DCCD. Contractor shall list the name and number of a contact person from DCCD on the statement that Contractor's personnel can call to report said violations.
- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.
- 14.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XV. PERSONNEL MANAGEMENT

- 15.1 Contractor shall promptly inform City (within 5 business days) of any key employee status changes, whether or not such positions are funded under this Agreement.

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- 15.2 Contractor shall provide City with its hours of operation no later than October 31, 2015. Contractor shall promptly inform the City if any change is made to daily schedule.
- 15.3 Contractor shall have a salaried full-time or part-time manager (works at least 20 hours per week, compensated at least a federal minimum wage) who is responsible for the business management of the organization on staff at all times during the term of this Contract. Contractor shall supply such manager's job description at the time of contract negotiation .
- 15.4 Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 15.4 Contractor is permitted to pay its full time employees for the total number of holidays authorized by City Council for City employees. If Contractor elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.
- 15.5 Contractor agrees to include job titles in their invoice(s), and additionally must provide to City upon request any salary or range increase/decrease information for City funded personnel positions.
- 15.6 Contractor agrees that all copies of written job descriptions for City funded personnel positions will be filed in all individual personnel folders for each position in the organization.
- 15.7 Upon request, the Contractor agrees to provide City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 15.8 At the sole discretion of the Executive Director of DCCD, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
 - (B) To serve as a juror;
 - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, mother, sister, brother, husband, wife or child, and other relatives, (including in-laws) if such other relatives are actually members of the employee's household. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or
 - (D) To attend seminars or workshops;
- 15.9 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.
- 15.10 Contractors providing performance pay for City-funded employees must perform regular employee appraisals which shall be made available to City upon request.
- 15.11 Contractor's primary and secondary contacts for this Contract will be identified upon contract negotiation and herein will have the ability to access agency files in order to function seamlessly during the course of business with the City. Contractor shall notify the City upon any change in contact information within 5 business days of the change.

Cultural Arts Operational up to \$24,999 (30-30-30-10)**Contract Number: 460000XXXX****XVI. ADVERSARIAL PROCEEDINGS**

16.1 Contractor agrees to comply with the following provisions:

- (A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City or any other public entity; and
- (B) Contractor, at City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against City remains unresolved.

XVII. CITY-SUPPORTED PROJECT

- 17.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is "supported by the City of San Antonio's Department for Culture and Creative Development" and by utilizing the official DCCD logo (not the "sahearts" website log). The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 17.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 17.3 Contractor shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 17.4 If Contractor identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for reimbursement by City.
- 17.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 17.6 All City-supported events must take place within the City of San Antonio city limits.

XVIII SPECIAL PROVISIONS

- 18.1 Indecency. The following is City's policy statement regarding material and/or performances funded under DCCD's Arts Agency Contracts:
 - (A) Contractor is instructed to make the public aware that sensitive subject matter of graphically violent and/or sexually explicit nature may be performed, sponsored or exhibited by displaying at all times during the term of this Contract an English/Spanish bilingual notice that viewer and/or parental discretion should be exercised. Contractor shall forward to the City a copy of the content of the notice to be displayed along with the notification required by Section 18.1 (b.)
 - (B) Contractor must make DCCD aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty (30) days prior to the actual activity.
 - (C) The City Council shall have the right to terminate this Contract upon finding that Contractor's activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.

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- 18.2 Tourism Impact. Contractor shall provide to City, prior to or at the time this Contract is executed, a list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry. Contractor may satisfy this requirement by submitting an existing calendar of events for the Contract period, provided that Contractor delineates which events on said calendar meet the specified requirements. Contractor shall update said list or calendar in the event of any modifications or additions.
- 18.3 Removal/Relocation. Contractor acknowledges that the location of the Project on City property may necessitate future removal or relocation that may subject the Project to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation of the Project, if practical and economically feasible as determined by City in its sole discretion, will occur in conformity with the guidelines and review requirements listed in City's Unified Development Code, Article VI, Division 5, Section 35-656. Contractor agrees that a City decision made under this paragraph regarding if, when and how to remove the Project is final.

Contractor hereby expressly consents to both the installation and removal of the Project and thereby expressly waives his/her Moral Rights to the Project. It is agreed that if the Project, or any portion thereof, is removed from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, the Project may not thereafter be referred to as "a Project by Contractor".

XIX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 19.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XX. ASSIGNMENT

- 20.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXI. AMENDMENT

- 21.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of DCCD shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:

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- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
 - B. modifications to the Performance Plan set forth in **Attachment I** hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I** hereto;
 - C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in Article III. Section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (**Attachment I**) of this Contract;
 - D. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of DCCD;
 - E. adjustments to the funding awarded under this Agreement in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 21.1(a) above; and
 - F. any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 21.1(a) and (e) above.
- 21.2 Any amendments to the Performance Plan must be made at least fifteen (15) days prior to any event being added to this Agreement by such amendment.
- 21.3 Any amendments to the Budget must be made at least fifteen (15) days prior to invoicing.

XXII. SUBCONTRACTING

- 22.1 Any work or services subcontracted hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees.

XXIII. OFFICIAL COMMUNICATIONS

- 23.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:

**City of San Antonio
Department for Culture and Creative Development
PO Box 839966
San Antonio, Texas 78283-3966**

Contractor:

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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 prior to the change.

XXIV. VENUE

- 24.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXV. GENDER

- 25.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVI. AUTHORITY

- 26.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code Section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide DCCD verification of the foregoing requirements no later than the execution date of this Contract.

XXVII. INDEPENDENT CONTRACTOR

- 27.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 27.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 27.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

XXVIII. SEVERABILITY

- 28.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract

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that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIX. CONTRIBUTION PROHIBITIONS

- 29.1 Contractor acknowledges that City Code Section 2-309 may apply to this Contract and provides that any person acting as a legal signatory for a proposed contractual relationship such as this one, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits their application for funding until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity.
- 29.2 Contractor acknowledges that this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXX. ENTIRE CONTRACT

- 30.1 This Contract and its attachments constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

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

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Felix Padrón
Executive Director
Department for Culture & Creative Development

XXXXXXXXXXXXXXXXXXXX
Address xxxxx
San Antonio, TX 782xx

Authorized Signor

APPROVED AS TO FORM:

Print Name

City Attorney

Board President (if required by Agency)

ATTACHMENTS

- Attachment I. – Program Statement, Performance Plan & Budget
Attachment II. – Contract Monitoring Report