

Cultural Arts Operational up to \$24,999 (Monthly)**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-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. 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) Contractor agrees that reimbursement of eligible expenses shall be made monthly or bi-weekly, as determined by the Executive Director of DCCD according to standard procedures followed by City's Finance Department. 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.
- (1) Invoice support documents must be provided by 4:00 p.m. on the 10th of the month and must reflect the budget set forth in Attachment I.
- (2) Contractor must provide support documentation for prior payments before receiving further payment.
- (3) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment.
- 4.3 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.
- 4.4 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of DCCD.

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- 4.5 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.
- 4.6 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.7 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.8 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.
- 4.9 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.
- 4.10 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 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

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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 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.

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- 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.
- 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:

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- (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>
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

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- (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.

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- (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 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
 - 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";

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- (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 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

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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 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.

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

- 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.
- 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.

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- 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.

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.
- 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.

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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:

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

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 (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 Festivals & Community Celebrations 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**.

Festivals & Community Celebrations 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. .
- 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:

Festivals & Community Celebrations Support	\$	Attachment I
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Festivals & Community Celebrations (50/50)**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 **Festivals & Community Celebrations 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 a 1:3 cash match from non-City sources 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 2016 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	
Upon Contract Execution	Performance Plan Completion
50%	50%

- (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

Festivals & Community Celebrations (50/50)**Contract Number: 460000XXXX**

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 a San Antonio based IRS recognized non-profit or an artist or artist's collective.
- 4.12.1 Funds can only be used for the following: Contracted Services and Artist Fees, Production Expenses, Space Rental and Marketing/Promotion.

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.

Festivals & Community Celebrations (50/50)**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

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.

Festivals & Community Celebrations (50/50)**Contract Number: 460000XXXX**

- 8.5 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.
- 8.6 Contractor shall provide to DCCD all information, upon request 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.
- 8.7 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 "**Festivals & Community Celebrations**" 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:	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;

a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles ** if transportation of participants is conducted	Combined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage 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 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
 - 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>

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- 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 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.

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- 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.

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.

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- 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 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.
- 14.5 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. CONTACT

- 15.1 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 The Festival will occur between October 1, 2015 and September 30, 2016.
- 17.7 The Festival must have been in existence a minimum of three (3) years prior to the final execution of this Contract.
- 17.8 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;
 - 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 of 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 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 and Creative Developer

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

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 **(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 **stART Place 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**.

stART Place 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.

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:

stART Place 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 **stART Place 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 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	
Upon Contract Execution	Performance Plan Completion
50%	50%

- (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.

stART Place (50/50)**Contract Number: 460000XXXX**

- 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 Funds can only be used for the following: Venue Rental, Contracted Services and Artist Fees, Production expenses (Production management/staging/sound), Lighting equipment rental specifically designed for the event.

V. ADMINISTRATION OF CONTRACT

- 5.1 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.

VI. AUDIT

- 6.1 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.
- 6.2 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.

- 6.3 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.
- 6.4 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 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.

VII. RECORDS, REPORTING, AND COPYRIGHTS

- 7.1 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.
- 7.2 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

- 7.3 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.

- 7.4 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.

- 7.5 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.

- 7.6 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.

- 7.7 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.

VIII. INSURANCE

- 8.1 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 "stART Place 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 : 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 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.

IX. INDEMNITY

- 9.1** **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.**
- 9.2** **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.**

stART Place (50/50)**Contract Number: 460000XXXX**

- 9.3 **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.**
- 9.4 **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.**
- 9.5 **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.**

X. APPLICABLE LAWS

- 10.1 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.
- 10.2.1 **Non-Discrimination.** As a party to this contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.
- 10.3 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.
- 10.4 Additionally, Contractor shall comply with the following:

stART Place (50/50)**Contract Number: 460000XXXX**

- 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
- 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>

10.5 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".

XI. NO SOLICITATION/CONFLICT OF INTEREST

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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

stART Place (50/50)**Contract Number: 460000XXXX**

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.

- 11.6 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.

XII. TERMINATION

- 12.1 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.
- 12.2 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.
- 12.3 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.

XIII. PROHIBITION OF POLITICAL ACTIVITIES

- 13.1 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

stART Place (50/50)**Contract Number: 460000XXXX**

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.

- 13.2 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.
- 13.3 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.
- 13.5 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.
- 13.6 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.

XIV. CONTACT

- 14.1 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.

XV. ADVERSARIAL PROCEEDINGS

- 15.1 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.

XVI. CITY-SUPPORTED PROJECT

- 16.1 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

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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.

- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 16.6 All City-supported events must take place within the City of San Antonio city limits.

XVII. SPECIAL PROVISIONS

- 17.1 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.

- 17.2 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, as applicable.

XVIII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 18.1 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.

XIX. ASSIGNMENT

- 19.1 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.

XX. AMENDMENT

- 20.1 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;
 - 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.
- 20.2 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.
- 20.3 Any amendments to the Budget must be made at least fifteen (15) days prior to invoicing.

XXI. SUBCONTRACTING

- 21.1 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.

XXII. OFFICIAL COMMUNICATIONS

- 22.1 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.

XXIII. VENUE

- 23.1 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.

XXIV. GENDER

- 24.1 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.

XXV. AUTHORITY

- 25.1 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.

XXVI. INDEPENDENT CONTRACTOR

- 26.1 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.
- 26.2 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.
- 26.3 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.

XXVII. SEVERABILITY

- 27.1 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.

XXVIII. CONTRIBUTION PROHIBITIONS

- 28.1 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.
- 28.2 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.

XXIX. ENTIRE CONTRACT

- 29.1 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

XXXXXXXXXXXXXXXXXXXXX
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

STATE OF TEXAS *

COUNTY OF BEXAR *

ARTS AGENCY CONTRACT WITH

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. _____ dated _____, and _____, (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, the Texas Commission on the Arts has provided certain funds to DCCD for reallocation 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 **stART Place 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**.

stART Place 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 _____ and shall terminate on _____.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII.

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. _____. 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:

stART Place Support	\$ xxx	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 **stART Place 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 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	
Upon Contract Execution	Performance Plan Completion
50%	50%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Contractor must provide support documentation for prior payments before receiving further payment.
- (3) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment.
- 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 Funds can only be used for the following: Venue Rental, Contracted Services and Artist Fees, Production expenses (Production management/staging/sound), Lighting equipment rental specifically utilized for the event.

V. ADMINISTRATION OF CONTRACT

- 5.1 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.

VI. AUDIT

- 6.1 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.
- 6.2 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.

- 6.3 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.

- 6.4 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 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.

VII. RECORDS, REPORTING, AND COPYRIGHTS

- 7.1 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.
- 7.2 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 30 days after completion of the project or no later than 4:00 pm on September 30, 2016, whichever comes first.
- 7.3 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.
- 7.4 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.

- 7.5 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.
- 7.6 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.
- 7.7 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.

VIII. INSURANCE

- 8.1 Contractor shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the CITY be required to maintain any insurance coverage for Contractor.

IX. INDEMNITY

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

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

X. APPLICABLE LAWS

- 10.1 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.

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

10.3 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.

10.4 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
- 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>

10.5 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".

XI. NO SOLICITATION/CONFLICT OF INTEREST

11.1 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.

- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 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.

XII. TERMINATION

- 12.1 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.

- 12.2 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.
- 12.3 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.

XIII. PROHIBITION OF POLITICAL ACTIVITIES

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.5 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.
- 13.6 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.

XIV. CONTACT

- 14.1 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.

XV. ADVERSARIAL PROCEEDINGS

- 15.1 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.

XVI. CITY-SUPPORTED PROJECT

- 16.1 Contractor shall identify all events and activities funded in whole or in part by ~~the Texas Commission on the Arts (TCA) through the~~ City by stating that the Project is "supported by the TCA" ~~City of San Antonio's Department for Culture and Creative Development~~ and by utilizing the official TCADCCD logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 16.6 All City-supported events must take place within the City of San Antonio city limits.

XVII. SPECIAL PROVISIONS

- 17.1 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.

- 17.2 ~~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, as applicable.~~

XVIII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 18.1 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.

XIX. ASSIGNMENT

- 19.1 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.

XX. AMENDMENT

- 20.1 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;
 - 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.
- 20.2 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.
- 20.3 Any amendments to the Budget must be made at least fifteen (15) days prior to invoicing.

XXI. SUBCONTRACTING

- 21.1 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.

XXII. OFFICIAL COMMUNICATIONS

- 22.1 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:

**Contractor Name
Address
San Antonio, TX 782xx**

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.

XXIII. VENUE

- 23.1 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.

XXIV. GENDER

- 24.1 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.

XXV. AUTHORITY

- 25.1 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.

XXVI. INDEPENDENT CONTRACTOR

- 26.1 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.
- 26.2 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.
- 26.3 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.

XXVII. SEVERABILITY

- 27.1 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.

XXVIII. CONTRIBUTION PROHIBITIONS

- 28.1 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.
- 28.2 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.

XXIX. ENTIRE CONTRACT

- 29.1 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 _____, 2015.

CITY OF SAN ANTONIO:

Felix Padrón
Executive Director
Department for Culture & Creative Development

CONTRACTING AGENCY:

**Contractor
address
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

STATE OF TEXAS *

COUNTY OF BEXAR *

ARTS AGENCY CONTRACT WITH

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 _____, (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 **Artist Re-Granting 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**.

Artist Re-Granting 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 **December 31, 2017**.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII.
- 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-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:

Artist Re-Granting Support	\$ 30,000	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 **Artist Re-Granting 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 2016 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 Contractor agrees that payment is contingent upon:
- (a) Verification that Contractor's funding process is open and accessible;
 - (b) A definable review and selection process of professional artists must be presented that is fair and equitable;
 - (c) Funding must be used to re-grant to San Antonio professional artists for expenses related to the creation of new works and said work must be publicly displayed/performed in the city of San Antonio;
 - (d) Upon satisfaction of, but not limited to, meeting the above requirements, City will pay up to the amount specified in Section 3.1. Contractor is able to utilize up to 10% for administrative purposes in overseeing the grant funding and compliance.
- 4.3 Contractor shall provide City with a copy of its Program Statement describing the Project, its policies and procedures regarding the regranting process and a timeline illustrating the projected dates of the awards funded under this Contract and the implementation of the resultant works and such documentation shall be attached to this Contract and the implementation of the resultant works and such documentation shall be attached to this Contract and incorporated as Attachment I.
- 4.4 All funds received under this Contract shall be subject to the following payment schedule ("Disbursement Schedule"):

Upon final execution	Upon completion of Regranting Process
10%	90%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Documentation detailing expenditures under this Contract must be provided to City by 4:00 p.m. on the 10th of the month following disbursement.

- (3) Contractor must provide support documentation for the initial payment before receiving the final payment.
 - (4) Upon the selection of the artists to receive regranting through this Contract, Contractor shall provide City with report detailing the Contractor's funding process, a list of all applicants with their respective scores, a list of selected artists, a description of their project/event/performance/etc. and the total amount allocated to the selected artist. The selection of such artists shall be completed and the City's notification shall be received no later than November 30, 2016.
 - (5) Once the work of the regranting artist funded through this Contract is completed, Contractor shall send City a final report detailing the final deliverable, total budget cost, and the location and date at which it will be available for public view. All work and final report must be completed by November 30, 2017.
 - (6) In the event the final deliverable(s) are not completed by September 30, 2017, Contractor shall return all funds received under this Agreement no later than October 31, 2017.
 - (7) In the event the final report is not received by City by November 30, 2017, the Contractor shall return all funds received under this Agreement no later than December 31, 2017.
 - (8) 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.
- 4.5 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.
- 4.6 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Executive Director of DCCD.
- 4.7 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.
- 4.8 Contractor agrees that City shall not be obligated to any third parties (including any regranting recipients, subcontractors or third party beneficiaries of Contractor).
- 4.9 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, unobligated 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.
- 4.10 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.
- 4.11 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.12 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.
- 4.13 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.
- 4.14 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.
- (B) Provided to selected artist.

- 5.2 Contractor shall provide DCCD notice of activity that generates program income. Contractor shall provide detail 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.

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 an accomplished milestone report and any other reports as may be required by City. . 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.

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
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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.
- (B) 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: <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 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. CONTACT

- 15.1 Contractor's primary contact 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.
- 17.7 Specific to this funding category, Contractor must have in place a funding process that is open and accessible.
- 17.8 The re-granting of City funds cannot be made to artists who do not have a permanent residence (minimum of 6 months) within the city limits of San Antonio.
- 17.9 Artist's projects or works used with a primarily fund-raising focus are ineligible.
- 17.10 The re-granting of City funds cannot be used for political purpose or against a political candidate, ballot measure or bill.

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, as applicable.

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) 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;
 - (D) 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
 - (E) any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 21.1(A) and (D) above.

XXII. OFFICIAL COMMUNICATIONS

- 22.1 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:

**Artist Foundation of San Antonio
113 Crofton Avenue
San Antonio, Texas 78210-1126**

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.

XXIII. VENUE

- 23.1 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.

XXIV. GENDER

- 24.1 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.

XXV. AUTHORITY

- 25.1 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.

XXVI. INDEPENDENT CONTRACTOR

- 26.1 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.
- 26.2 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.
- 26.3 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.

XXVII. SEVERABILITY

- 27.1 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.

XXVIII. CONTRIBUTION PROHIBITIONS

- 28.1 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.
- 28.2 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.

XXIX. ENTIRE CONTRACT

- 29.1 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.

Signatures on following page

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 and Creative Developmer

APPROVED BY:

Sheryl Sculley
City Manager

Authorized Signor
Title: _____

APPROVED AS TO FORM:

Print Name

City Attorney

Board President (if required by Agency)

ATTACHMENTS

Attachment I. – Program Statement, Performance Plan & Budget

AMENDMENT TO MEMORANDUM OF AGREEMENT

This amendment is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as “City”) acting by and through the San Antonio Metropolitan Health District, and the YMCA of Greater San Antonio, (hereinafter referred to as “YMCA”), both of which may be referred to herein collectively as the “Parties”.

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

WHEREAS, the City entered into an Agreement with the YMCA to continue Siclovía events through September 30, 2015 with funding for an amount up to \$120,000.00; and

WHEREAS, the City has determined that additional funding, in the amount of \$120,000.00, is available for the YMCA’s efforts in staging Siclovía events through the extended term of the Agreement which now continues through September 30, 2016. These additional funds will bring the total value of the agreement to an amount not to exceed \$480,000.00; and

WHEREAS, the City Council has determined that Siclovía provides a benefit to the City of San Antonio by promoting increased physical activity and impacting normative beliefs regarding physical activity and exercise; **NOW THEREFORE:**

City and the YMCA agree to amend the Agreement as follows:

1. Section 2.1 is amended by replacing the entirety of the section with the following:
 - 2.1 This agreement shall commence on March 19, 2012 and will terminate on September 30, 2016.
2. Article IV is hereby amended by adding Section 4.8.3 as set out below:
 - 4.8.3 The City, through its Public Works Department, will provide traffic control plans, pavement markings, installation/collection of No Parking signs, limited street and sidewalk repairs, pre and post-event street sweeping, mowing, and other administrative functions if necessary for the April 3, 2016 Siclovía event pursuant to a Funding Agreement executed by the parties and approved by the City Council for the City of San Antonio on September 10, 2015. Public Works may provide similar services and support for the second event addressed in this Agreement. Any additional services to be provided by Public Works, and subsequent funding, that is required to ensure the success of future events may be addressed in a separate agreement.

3. Section 4.9 is amended by replacing the entirety of the section with the following:

4.9 The total amount of the Agreement will be an amount not to exceed FOUR HUNDRED AND EIGHTY THOUSAND AND NO/100THS DOLLARS (\$480,000.00) to the YMCA for Siclovía events held during the full term of this Agreement, as set out below:

4.9.1 The City will provide an amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100THS DOLLARS during segment one (March 19, 2012 – September 30, 2013) of this Agreement.

4.9.2 The City will provide an amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100THS DOLLARS during segment two (October 1, 2013 – September 30, 2014) of the Agreement.

4.9.3 The City will provide an amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100THS DOLLARS during segment three (October 1, 2014 – September 30, 2015) of the Agreement.

4.9.4 The City will provide an amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100THS DOLLARS during segment four (October 1, 2015 – September 30, 2016) of the Agreement.

4. Article V of the Agreement is hereby amended by adding Section 5.1.3 as follows:

5.1.3 The YMCA will utilize its working experience on planning and implementing Siclovía events to plan, implement and stage two (2) future Siclovías during segment four of the Agreement, to be held on or about April 3, 2016 and September 25, 2016.

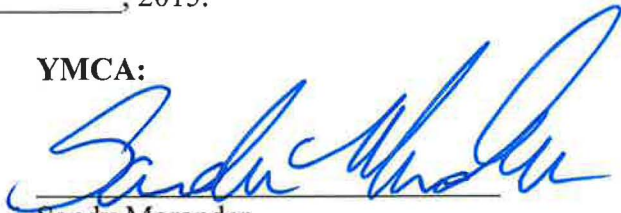
5. All other terms, conditions, covenants and provisions of the Agreement are hereby continued and shall remain in effect in their original form, except for the provisions modified by this Amendment.

Executed this the _____ day of _____, 2015.

CITY OF SAN ANTONIO:

Erik Walsh
Deputy City Manager

YMCA:



Sandy Morander
President & CEO

APPROVED AS TO FORM:

City Attorney

Contract #

STATE OF TEXAS *

COUNTY OF BEXAR *

DELEGATE AGENCY CONTRACT**WITH**

CITY OF SAN ANTONIO *

THE UNIVERSITY OF TEXAS AT 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 Director of the Department of Human Services pursuant to Ordinance No. 2015-09-10-____, dated September 10, 2015, and The University of Texas at San Antonio (hereinafter referred to as "Contractor") (both of which may be referred to herein collectively as the "Parties").

WITNESSETH:

WHEREAS, the Department of Human Services is designated as the managing City department (hereinafter referred to as "Managing City Department") for the City; and

WHEREAS, the City has provided certain funds from the City of San Antonio General or Grant Fund Operating Budget (hereinafter referred to as "General Fund" or "Grant Fund," as applicable) for Youth services; and

WHEREAS, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of \$36,947.00 for a project entitled "College Pre-Freshman Engineering Program (PREP)" (hereinafter referred to as the "Project"); and

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

THEREFORE: The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide, oversee, administer, and carry out all activities and services in a manner reasonably satisfactory to the City and in compliance with the Scope of Work and SA2020 Scorecard attached hereto and incorporated herein for all purposes as Attachment I.

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.

III. CONSIDERATION

- 3.1 In consideration, the City will reimburse Contractor for costs incurred in accordance with the budget approved by the City Council of San Antonio in the above referenced Ordinance, and all subsequently authorized amendments to that budget. Said budget is attached hereto and incorporated herein for all purposes as Attachment II (the "Budget"). It is specifically agreed that reimbursement hereunder shall not exceed the total amount of \$36,947.00.

- 3.2 The funding level of this Contract is based on an allocation from the following funding sources:

\$36,947.00 General Fund

Consequently, Contractor agrees to comply with the Funding Guide, attached hereto and incorporated herein for all purposes as Attachment III.

- 3.3 Contractor understands and agrees that the funds provided to Contractor from the City's Consolidated Human Development Funding Services Pool shall represent a limited percentage of Contractor's total agency revenues and expenses for the contract term, which percentage is established by City Council and is subject to change. The percentage of the total agency revenues and expenses derived from sources other than City funds is sometimes referred to as the agency's "match" requirement. Contractor's total agency revenues and expenses derived from non-City sources and from the City is Contractor's Total Budget. Contractor shall comply with any matching fund requirements set by City Council that apply to Contractor's contract, regardless of when such requirements are passed. If Contractor receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then Contractor shall obtain thirty-five percent (35%) of its Total Budget from non-City sources (i.e., no more than sixty-five percent (65%) of its Total Budget is derived from the City). If Contractor receives less than an aggregate amount of \$1,000,000.00 in City funds from all City funded contracts, then Contractor shall obtain fifty percent (50%) of its Total Budget from non-City sources (i.e., no more than fifty percent (50%) of its Total Budget is derived from the City). City shall require sufficient evidence that such funding is in place with their annual program budget prior to contract execution. Contractor understands that City shall have no obligation to provide any funds hereunder until Contractor demonstrates having secured the percentage of matching funds required of Contractor. Contractor understands and acknowledges that Pell grants and other awards received by individuals shall not count toward its matching fund requirements. Additionally, Contractor understands and acknowledges that in-kind contributions shall not count toward its matching fund requirements. Contractor shall provide acceptable evidence, as determined solely by the City, that Contractor has expended a funding amount from non-City funds equal to or greater than the applicable matching funds percentage requirement. City reserves the right to make such a request at the end of each quarter throughout the Contract term for evidence that Contractor has expended or is on course to expend the applicable percentage of funds constituting its match prior to the end of the Contract term. If Contractor does not provide City with acceptable evidence that funds have been expended as required herein, Contractor understands and agrees that City may reduce or recapture pursuant to 4.1 the amount of City funds provided to Contractor in order to comply with the required expenditure ratio of non-City funds to the Total Budget, without first obtaining the approval of City Council.
- 3.4 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Contract are contingent upon the actual receipt of adequate General or Grant Fund revenue, as applicable, to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Contract or should awarded Grant Funds be reduced, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this Contract or reduce the Scope of Work and Consideration accordingly.

IV. PAYMENT

- 4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the 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, including but not limited to those laws referenced in Section XII hereof, 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 II of this Contract, unless (a) a subsequent budget revision has been approved and signed by the Director of the Managing City Department or designee in cases where the total Contract Budget remains the same, or (b) a Contract amendment has been approved and signed by the Director of the Managing City Department pursuant to Section 24.1 of this Contract in cases where there is an increase or decrease to the total Budget. Approved budget revisions and Contract amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Contract amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Budget, and all references in the Contract to the budget shall mean the budget as revised through approved budget revisions or Contract amendments. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. Contractor shall remit

to City within ten (10) business days after the City makes the request for remittance any funded amounts which were paid pursuant to this Article IV and used to cover disallowed costs. Any such amounts not remitted within ten (10) business days may, at City's option, be subject to offset against future funding obligations by City. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees.

- 4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request in the form prescribed by the City. Contractor agrees that the City shall not be obligated to pay for any advances requested. In those instances in which advance payments are authorized, the Director of the Managing City Department may, in the Director's sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final. In those instances in which advance payments are authorized:
- (A) Contractor's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that an advance payment check is available from the City, so long as services have been performed by the subject vendor.
 - (B) The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited with said bank, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor's account balance to exceed the FDIC limit shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. Contractor shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made pursuant to this and all other City contracts.
 - (C) The City may, in its sole discretion, either deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Contract term, or from a single subsequent monthly reimbursement the full amount previously advanced to Contractor. The City may consider factors such as projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.
- 4.3 Contractor shall submit to City no later than the fifteenth (15th) of every month a monthly Request for Payment in the form prescribed by City, which details the specific costs (by category and by program account number) Contractor expensed in the previous month for the services delivered as described in Article I herein, including supporting documentation of such costs as may be required by the Director of the Managing City Department. The Request for Payment shall also specify the Program Income (as defined herein) received or projected during the same time period. The Director of the Managing City Department may require the Contractor's submission of original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses.
- 4.4 City shall make reimbursement payments of eligible expenses to the Contractor of any undisputed amounts as determined by the Director of the Managing City Department in accordance with established procedures, so long as City receives a properly completed and documented Request for Payment. City shall make payment to Contractor within 30 calendar days of receiving a valid and approved Request for Payment.

- 4.5 The Contractor shall submit to City all final requests for payment no later than 45 days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.
- 4.6 Contractor agrees that the City shall not be obligated to any third parties of Contractor (including any subcontractors or third party beneficiaries of Contractor) under this Contract.
- 4.7 Contractor agrees that administrative overhead costs may not exceed twenty percent (20%) of the funding provided pursuant to this Contract. Contractor shall submit detailed administrative costs by line item with its annual program budget prior to Contract execution by the deadline established by the City.
- 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, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) 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. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the 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 the City and the disbursement of said funds by the Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;
 - (G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
 - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. 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 that Contractor costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
- 4.10 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Project funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included with Contractor's annual program budget prior to Contract execution by the deadline established by the City.

The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

- 4.11 Upon expiration or early 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, must promptly, upon receipt, be returned by Contractor to the City. Upon expiration or early termination of this Contract, all advance payments exceeding allowable costs incurred during the Contract term or for which Contractor fails to deliver services as consideration and as specified under the Contract shall be returned within twenty (20) calendar days of written notification to Contractor of the need for reimbursement.
- 4.12 Upon execution of this Contract or at any time during the term of this Contract during regular business hours and upon advance written notice to the Contractor, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review all Contractor's systems of internal accounting and administrative controls related to Project prior to the release of funds hereunder.
- 4.13 Contractor agrees that prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. Contractor agrees that the City may immediately terminate this Contract if the City finds, as solely determined by the City, that Contractor is in such unsatisfactory financial condition as to endanger performance under this Contract. The City may consider evidence such as the apparent inability of Contractor to meet its financial obligations and items that reflect detrimentally on the credit worthiness of Contractor. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of Contractor, the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

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."Program income" shall not include tuition or student fees collected by Contractor. At the sole option of the Director of the Managing City Department, Contractor will either (a) be required to return program income funds to City through the Managing City Department, or (b) upon prior written approval by the Director of the Managing City Department, Contractor may be permitted to retain such funds to be:
 - (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or
 - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.
- 5.2 In any case where Contractor is required to return program income to the Managing City Department, Contractor must return such program income to City within a reasonable timeframe that may be specified by the Director of the Managing City Department. If the Director of the Managing City Department grants Contractor authority to retain program income, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.
- 5.3 Contractor shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all

activities that generate program income.

- 5.4 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.5 Contractor is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
- 5.6 Contractor shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 THIS SECTION INTENTIONALLY LEFT BLANK
- 6.2 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, reasonable attempt shall be made by City and Contractor to settle such dispute through good faith negotiation.
- 6.3 Contractor shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director of the Managing City Department.
- 6.4 The City shall have the authority during normal business hours to make physical inspections of the operating facility occupied by Contractor for the administration of this Contract and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.
- 6.5 The Contractor shall establish and use internal project management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.
- 6.6 Contractor agrees to comply with the following check writing and handling 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 per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.
 - (C) Checks issued by City to Contractor shall be deposited into the appropriate bank account promptly after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 6.7 City reserves the right to request Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.

- 6.8 The use or purchase of gift cards is not allowable and reimbursable under this Contract.

VII. AUDIT

- 7.1 Contractor agrees that if Contractor receives or expends more than \$750,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (OMBA-133 revision).
- 7.2 If Contractor expends less than \$750,000.00 of City dollars during the term of this Contract, then the Contractor shall complete and submit an unaudited financial statement(s) to the Managing City Department within ten (10) business days following submission to the Texas Comptroller of Public Accounts as required by Texas law. Contractor shall submit financial statements covering the entire fiscal period covered by the term of this Contract, which may require submission of multiple annual statements to the City following their submission to the Texas Comptroller of Public Accounts.
- 7.3 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each project funded by or through the City.
- 7.4 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Contract, with prior written notice to Contractor, at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, 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 and shall continue to make available the 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 three (3) 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 expiration, save and except when there is litigation or if the audit report covering such Contract has not been accepted, then the 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, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

The City acknowledges that Contractor has its own accounting and administrative procedures for planning, controlling, monitoring and reporting fiscal matters. Contractor agrees that it will adhere to its own procedures and provide information to the City regarding its procedures as reasonably requested in writing by the City.

- 7.5 When an audit or examination determines that the Contractor has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the 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, the Contractor will promptly refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department 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 the 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 cashier's

check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the Contractor is forbidden from reducing 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 the Contractor and shall not be paid from any Project funds received by the Contractor under this Contract.

- 7.6 If the City determines, in its sole discretion, that Contractor 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 shall pay for such requested audit, except in the event that the requested audit determines that violations due to negligence or fraud on the part of the Contractor have occurred, in which case the Contractor agrees that it shall be responsible for reimbursement of the costs of the audit.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, all policies, procedures, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, and Project participants pertaining to the matters covered by this Contract.
- 8.2 The Contractor shall submit to the Managing City Department such reports as may reasonably be required by the City or by the Grantor, if Grant funded, including the Contract Monitoring Report, which template is attached hereto and incorporated herein as Attachment IV. At the start of the Contract term, a Contract Monitoring Report containing projected monthly performance measures for the entire Contract term shall be developed and approved by designated Contract monitoring staff. Contractor shall submit a completed Contract Monitoring Report no later than the 15th day of every month, which shall reflect the actual services delivered and outcomes achieved against the projected performance measures for all months preceding the submission. The Contractor ensures that all information contained in all required reports submitted to City is accurate and support documentation shall be maintained.
- 8.3 Notwithstanding any terms herein, Contractor or Contractor's investigators shall have the right to publish any results, information, or data associated with the Project and to assert copyright or proprietary claims to any results, information, studies, or reports using data related to the Project, if such results, information, studies or reports were not included in the work to be delivered to the City under the Project. Contractor agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, Project evaluation, Project designs, data, and other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information during the term of this Contract and for a period of three (3) years following the expiration or early termination hereof. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor has specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to informing Contractor's employees and subcontractors of the confidential nature of such information prior to any disclosure provided that Contractor shall remain fully responsible for any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon expiration or early termination of this Contract, Contractor shall return to City all copies of materials related to the Project, including the Confidential Information. Notwithstanding the foregoing, Contractor shall be permitted to retain one copy of Confidential Information for the sole purpose of determining any continuing obligations of confidentiality hereunder.

- 8.4 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall (a) promptly forward such requests to City for -notification purposes and to afford the City the opportunity to assert any applicable arguments or protections necessary to protect its information, and (b) take action as authorized under the Public Information Act to protect information that may be confidential pursuant to State or Federal law. If the requested information is confidential pursuant to state or federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than five (5) business days of Contractor's receipt of such request.
- 8.5 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. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.
- Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this 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 expiration or early termination of this Contract, if requested by the City. 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 Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.
- 8.6 Ownership of Intellectual Property. Contractor and City agree that the Project shall be and remain the sole and exclusive proprietary property of Contractor. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in Contractor. Subject to confidential treatment by City of Contractor confidential information that may be disclosed thereunder, Contractor grants City a permanent and perpetual, fully paid-up, non-exclusive license under Contractor's copyrights to reproduce, publish, use, and to make derivative works, from any written report prepared and delivered to City in accordance with this Contract. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.
- 8.7 Within a period not to exceed 90 days from the expiration or early termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.
- 8.8 THIS SECTION INTENTIONALLY LEFT BLANK
- 8.9 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 12.3 of this Contract.

IX. INSURANCE

- 9.1 Contractor and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

X. INDEMNITY

- 10.1 Contractor and the City acknowledge they are political subdivisions of the State of Texas and are subject to comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

THIS SECTION INTENTIONALLY LEFT BLANK

XII. APPLICABLE LAWS

- 12.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition, Contractor shall comply with the following Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by Contractor hereunder.
- 12.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. 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>
 - Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>
 - Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
 - Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
 - Texas Local Government Code can be found at <http://www.statutes.legis.state.tx.us/>

In addition to the applicable laws referenced above, Contractor must also adhere to those compliance requirements that are set out or referenced in this Contract and that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated.

- 12.4 Contractor 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. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions,

including but not limited to:

- (A) Title VII of the Civil Rights Act of 1964, as amended;
- (B) Section 504 of the Rehabilitation Act of 1973, as amended;
- (C) The Age Discrimination Act of 1975, as amended;
- (D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
- (E) Fair Labor Standards Act of 1938, as amended;
- (F) Equal Pay Act of 1963, P.L. 88-38; and
- (G) All applicable regulations implementing the above laws.

- 12.5 The Contractor certifies that any and all taxes that the Contractor may be obligated for, including but not limited to, federal, state, and local taxes, fees, special assessments, federal and state payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor shall comply with all applicable local, state, and federal laws including, but not limited to:
- (A) worker's compensation;
 - (B) unemployment insurance;
 - (C) timely deposits of payroll deductions;
 - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
 - (E) Occupational Safety and Health Act regulations; and
 - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 12.6 Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and all regulations thereunder.
- 12.7 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if Contractor receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), Contractor shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of Contractor receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state's economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.
- 12.8 Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Contract as they may be promulgated.
- 12.9 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. Expenditures shall be made in accordance with all bidding requirements that Contractor would be required to perform under Section 51.9335 of the Texas Education Code, and other laws and regulations pertaining to purchasing and contracting authority of institutions of higher education.
- 12.10 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T thirty (30) days after Internal Revenue Service (IRS) deadlines for completion. If filing an extension, Contractor shall notify the City in writing of the extension and the anticipated date of filing with the IRS. Contractor shall submit the 990 or 990T to the Managing City Department no later than 30 days after the date of filing the form for which Contractor received an extension.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 The Contractor certifies 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 the Contractor or the City. For breach or violation of this representation and certification, the 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.
- 13.2 Contractor represents to the best of Contractor's knowledge and after reasonable inquiry 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.
- 13.3 Contractor further represents 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.
- 13.4 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.
- 13.5 Contractor acknowledges that it is informed that Charter of the 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 the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his 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.
- 13.6 Contractor represents and certifies, and this Contract is made in reliance thereon, that neither the Contractor nor any of its officers, employees, or agents performing on this Contract is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. Contractor further certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. TERMINATION

- 14.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if the Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract in whole or in part by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the tenth (10th) day following the day on which such notice is sent). The 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 reasonably determined by the 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, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.

- 14.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project would not produce desired results commensurate with the further expenditure of funds or if the City has insufficient revenue to satisfy the City's liabilities hereunder. Such termination by City shall specify the date thereof, which date shall not be sooner than the thirtieth (30th) day following the day on which notice is sent. The 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 the thirtieth (30th) day following the day on which notice is sent. The 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 the 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, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any material breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.
- 14.4 Should the Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City's sole and absolute discretion, be grounds for termination for cause.

XV. PROHIBITION OF POLITICAL ACTIVITIES

- 15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 15.2 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.
- 15.3 The prohibitions set forth in sections 15.1 and 15.2 of Article XV 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.
- 15.4 To ensure that the above policies are complied with, Contractor shall inform every member of its personnel paid out of City funds under this Contract of the above prohibitions and shall further direct 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. Contractor represents that it has a compliance program in place that includes a telephone number that Contractor's personnel can call to report violations of the above policies. Contractor will promptly address any such reports it receives and will advise City of such reports within twenty-four (24) hours of receiving any such report.
- 15.5 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 the City's discretion, be withheld until the situation is resolved.
- 15.6 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.

XVI. PERSONNEL MANAGEMENT

- 16.1 The Contractor certifies it has established internal procedures that assure employees of an established complaint and grievance policy. The grievance policy includes procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 16.2 Contractor is permitted to pay its full time employees funded through this Contract for the total number of holidays authorized by the City Council for City employees. If the 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.
- 16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department. This provision shall not limit the Contractor from affecting salary or range increases using non-City funds or non-City resources.
- 16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization funded through this Contract.
- 16.5 The Contractor agrees to provide the 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.
- 16.6 At the sole discretion of the Director of the Managing City Department, 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, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother,

spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. 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.

- 16.7 Contractor's leadership 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.

XVII. ADVERSARIAL PROCEEDINGS

- 17.1 Contractor agrees to comply with the following special 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 the City or any other public entity; and
- (B) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

- 18.1 Contractor shall publicly acknowledge that this Project is supported by the City of San Antonio, Department of Human Services. Throughout the term of this Contract, Contractor agrees to include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by Contractor. Contractor shall obtain the City's prior approval of the language and logo, as applicable, to be used.

XIX. EQUIPMENT

- 19.1 Contractor acknowledges that no equipment will be acquired or procured under this Contract.

XX. TRAVEL

- 20.1 Contractor and City acknowledge that no business travel costs shall be payable under this Contract.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

- 21.1 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.

XXII. DEBARMENT

- 22.1 Contractor certifies to the best of Contractor's knowledge and after reasonable inquiry, neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program.
- 22.2 Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the Contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXIII. ASSIGNMENT

- 23.1 Contractor shall not assign nor transfer Contractor's interest in this Contract or any portion thereof without the written consent of the City Council of San Antonio, 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.

XXIV. AMENDMENT

- 24.1 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 Director of the Managing City Department 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, and 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 increasing funding and 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 Scope of Work and SA2020 Scorecard set forth in Attachment I hereto due to the adjustment described in subsection (A) of this Section or for any other reason, so long as the terms of the amendment are reasonably within the parameters set forth in the original Scope of Work and SA2020 Scorecard;
- (C) budget shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged (these modifications may be accomplished through Budget revisions);
- (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 Director of the Managing City Department;
- (E) reduction of the total Contract amount in order to comply with the match requirement expenditure ratio set forth in Section 3.3, and to amend the budget accordingly which is set forth in Attachment II hereto. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 24.1(E); or
- (F) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City and Grantor of the grant source, if so required by said Grantor.
- 25.2 Contractor must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, state and federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.

- 25.3 Any work or services for sub-contracting hereunder, shall be sub-contracted 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 Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.
- 25.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program.

XXVI. OFFICIAL COMMUNICATIONS

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

City:

Director
Department of Human Services
106 S. St. Mary's Street, 7th
Floor San Antonio, Texas 78205

Contractor:

Dr. Raul Reyna
Executive Director
University of Texas at San Antonio
501 W. Durango Blvd, MNTB 180
San Antonio, Texas 78207

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.

XXVII. VENUE

- 27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Any action or proceeding brought to enforce the terms of this 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. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

XXVIII. GENDER

- 28.1 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.

XXIX. AUTHORITY

- 29.1 Contractor represents, assures and certifies that the signer of this Contract has been granted full authorization to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor represents to City that it is currently operating as a not-for-profit state government agency. Contractor is authorized to do business in the State of Texas and is formed under and operating in accordance with all applicable laws of the State of Texas.

XXX. LICENSES AND TRAINING

- 30.1 Contractor represents and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided hereunder.

XXXI. INDEPENDENT CONTRACTOR

- 31.1 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 the City shall in no way be responsible therefor, 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.
- 31.2 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.
- 31.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor 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 Contractor.

XXXII. SEVERABILITY

- 32.1 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.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered "high profile" as that term is defined in the City of San Antonio Procurement Policy and Procedures Manual.

- 33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the City from the time the City begins discussions or negotiations, and ending on the 30th calendar day 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. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 33.2 Contractor acknowledges that the City has identified this Contract as high profile.
- 33.3 Contractor represents and certifies, and 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 signer of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXXIV. ENTIRE CONTRACT

- 34.1 This Contract and its attachments, if any, 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:

Melody Woosley, Director
Department of Human Services
APPROVED AS TO FORM:

Assistant City Attorney

CONTRACTOR:

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

Can (John) Saygin, Ph.D., Assistant
Vice President for Sponsored Project Administration

ATTACHMENTS

Attachment I – Scope of Work and SA2020 Scorecard
Attachment II – Budget
Attachment III – Funding Guide
Attachment IV – Contract Monitoring Report

**Interagency Participation Agreement between the City of San Antonio and
CPS Energy for the Implementation of
“Green Shade Tree Rebate Program”**

This Interagency Participation Agreement (the “Agreement”) is entered into as of the _____ day of _____, 2015 by and between the City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. _____ dated _____, 2015 (“COSA” or City”), and CPS Energy, acting by and through the City Public Service Board, (“CPS Energy”). CPS Energy and the City are sometimes referred to herein individually as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS, COSA, a home-rule city under the laws of the state of Texas, and CPS Energy, a municipally-owned electric and gas utility owned by COSA, jointly agree to implement a tree rebate program; and

WHEREAS, the CITY has negotiated with CPS Energy to manage the “Tree Rebate for Energy Savings Program” (hereinafter referred to as the “Program”); and

WHEREAS, the City will provide funding for up to one thousand \$50 rebates to be funded from the Tree Mitigation and Tree Canopy Funds (“Funds”); and

WHEREAS, \$50,000.00 has been approved in the City’s FY 2016 adopted annual budget; and

WHEREAS, the goal of the San Antonio tree rebate program is to engage and unify the community in a common effort to plant trees to increase energy savings in homes, schools, and businesses while also improving air and water quality, stormwater control, reducing temperatures, and enhancing the beauty and well being of the greater San Antonio area; and

WHEREAS, CPS Energy and the City worked jointly to develop the Program, therefore the total of all payments and obligations to CPS Energy, shall not exceed the total amount of \$50,000.00 and CPS Energy in-kind contribution valued at \$10,000.00; and

WHEREAS, coordination between the City and CPS Energy of their respective energy initiatives will increase the efficiency of the effort and result in a better utilization of resources; and

NOW, THEREFORE, the Parties mutually agree to coordinate their efforts for the purpose of implementing the Program. CPS Energy and the City desire to set forth certain understandings as follows:

1. Description of “Green Shade Tree Rebate Program ”

- (a) Tree Mitigation and Tree Canopy Funds will be used to provide up to 1,000 rebates (not to exceed \$50,000.00 in total) to plant trees throughout the Greater San Antonio Area in a manner that will maximize the energy savings of a building structure or homestead. The program will target residential and commercial sectors. Tree Mitigation and Tree Canopy Funds will be used to contract with CPS Energy to provide rebates in the form of a financial incentive, specifically a \$50.00 CPS Energy bill credit for each tree planted (limit 5 rebates per address, not to exceed \$250.00 in total).
- (b) CPS Energy will work with the City by providing personnel to assist City staff in the coordination, development, marketing and implementation of the Program.

2. Accountabilities of COSA

- (a) **Parks & Recreation Department.** The Parks & Recreation Department (“PARD”) (with the participation of the Finance Department) will be accountable for providing funds for up to 1,000 rebates.
 - i. **Financial Administration and Reporting.** PARD will be accountable for the following financial and reporting tasks:
 - 1. Reimbursement of properly invoiced Program rebate costs incurred by CPS Energy within 30 days of receipt of invoice.
 - ii. **Program Compliance.** PARD will be accountable for the following program compliance tasks:
 - 1. Ensure proper auditing for expenditure of PARD Funds.
 - 2. Develop program implementation schedule/timetable, with CPS Energy.
 - iii. **General Program Administration.** PARD shall have the authority to review any applications and approve any additional species prior to reimbursement to ensure the successful administration of the Green Shade Tree Rebate Program.

3. Accountabilities of CPS Energy

- (a) **Green Shade Tree Rebate Program Implementation.** CPS Energy will be accountable for program design, marketing, and administration of rebates.

i. **Program Design and Coordination**

1. CPS Energy and the City will coordinate development and implementation of the Green Shade Tree Rebate Program. CPS Energy will be accountable for application development, intake, and processing, including:

- A. Development of the program application and brochure

- B. Coordination of the review and approval process for program design by applicable City departments and partner agencies.

ii. **Application Intake/Processing/Rebate Disbursement**

1. CPS Energy will provide intake and approval processing of tree rebate applications (limit 5 rebates per address not to exceed \$250.00 in total).
2. Enter each application within a database system.
3. Disburse rebates to eligible rebate applicants in the form of a CPS Energy bill credit.

iii. **Invoicing and Updates**

1. CPS Energy will provide the City with invoices by the first Monday close of business day each month with proper documentation on a rebate applicant spreadsheet that includes number of customer credits granted and the number of applications received, qualified, and denied.
2. CPS Energy will provide status updates and deliverable timelines when available, though not less frequently than once at the end of each calendar quarter.

iv. **Educational Awareness.**

1. CPS Energy, as a part of its in-kind contribution, will develop the promotional and educational materials for the Program. The deliverables will be limited to the following six items:
 - a. Marketing and Advertising Design Development
 - b. CPS Energy Webpage for Program

- c. (2) Press Releases
 - d. (2) Publications in “Energy Connection” newsletter
 - e. Printing of application/brochures, bill inserts, and other applicable education material.
- v. **General Program Implementation.** CPS Energy shall have the authority to implement additional policies as necessary for the successful implementation of the Program.
4. **COSA/CPS Energy Joint Administration Committee.** COSA and CPS Energy shall form a Joint Administration Committee (the “Committee”) consisting of three members, including: (1) COSA Representative No. 1, Parks and Recreation Department, Tree Division; (2) CPS Representative No. 1, Sustainable Growth Executive and (3) CPS Representative No. 2, Program Manager. The Committee shall have the authority to develop and implement new policies, procedures, and regulations necessary for the successful implementation and administration of the Program. The work of the Committee shall be approved by majority vote of the committee members and a written record will be created every time the Committee meets. Records will be maintained by CPS Energy. Either Party may call a meeting of the Committee. An official meeting need not be called for the Committee to act. For example, decisions of the Committee may be made through written correspondence, including email, as long as a majority of the Committee approves of the decision to be made in writing. Each member may designate another individual to serve on the Committee if he or she is unable to attend a Committee meeting. Any vacancy on the Committee shall be replaced by appointment of a new member by the remaining member of the party whose member was unable or unwilling to continue to serve. If both members are vacant a replacement will be designated by either City or CPS Energy. The Committee cannot take any action unless a majority of its members have voted on an item, whether the Committee meets formally or communicates through correspondence, and in either event, the Committee will develop minutes of its formal or virtual meeting. The Committee may be terminated by approval of both Parties once the Program is fully implemented and all compliance and reporting requirements have been met.
5. **Liability.** Each party shall be responsible for its own actions and those of its employees and/or persons acting by or on its behalf along with any liability arising from such activities while carrying out the purpose of this Agreement. Each party agrees to have sufficient insurance in place to cover all obligations assumed in this Agreement and any liabilities arising while carrying out those obligations.

6. **Effect of Agreement.** This Agreement is entered into for the purpose of providing a framework for the joint administration and implementation of the Program undertaken by the City and CPS Energy. It is not intended as an exhaustive or complete listing of the terms and conditions that will govern this joint effort.
7. **Notice.** For purposes of this Agreement, all official communications and notices between the Parties shall be deemed sufficient if in writing and mailed registered or certified mail, postage prepaid, to the addresses set forth below:

Communication to the City at:

City of San Antonio
Parks & Recreation Department
5800 Old Hwy. 90 W
San Antonio, TX 78227
Attention: Ross Hosea
with a copy e-mailed to melinda.cerda@sanantonio.gov

Invoices to the City at:

City of San Antonio
Accounts Payable
P.O. Box. 839966
San Antonio, TX 78283
with a copy e-mailed to
ross.hosea@sanantonio.gov, and
frances.serna@sanantonio.gov

Communication to CPS Energy at:

CPS Energy
PO Box 1771 – MD 100406
San Antonio, TX 78296
Attention: Kimberly R. Stoker
krstoker@cpsenergy.com
with a copy e-mailed to balettman@CPSEnergy.com

8. **Term.** The term of this Agreement is for a period of one (1) year, from October 1, 2015 through September 30, 2016, but may be terminated at an earlier time by approval of both Parties.

This Agreement is executed to be effective upon approval of both Parties.

City of San Antonio

By: _____

Xavier D. Urrutia,
Interim Assistant City Manager

Date: _____

CPS Energy

By: _____

Kimberly R. Stoker,
Director, Environmental & Sustainability

Date: _____

DRAFT

FY2016 Green Shade Tree Rebate Program Budget Outline

Yearly Expense	Qty	Unit	Price	Total
COSA Rebates	1,000	Ea	\$50.00	\$ 50,000.00
COSA Total				\$ 50,000.00
Administration and Materials				
COSA				\$ -
CPS Energy				\$ 10,000.00
Administration and Materials Total				\$ 10,000.00
Total Costs				\$ 60,000.00

MARKETING SPONSORSHIP AGREEMENT

This Marketing Sponsorship Agreement (this "Agreement"), dated as of August 28, 2015, sets forth the rights and obligations of the City of San Antonio (the "City") with respect to the 2015 Women in the World Texas Salon currently anticipated to be held on December 8, 2015 in San Antonio, Texas (the "Event"), which is managed, promoted and conducted by Women in the World Media, LLC ("WWM").

1. Sponsorship Benefits.

Exhibit A, attached to this Agreement and incorporated herein by this reference, describes the sponsor recognition, brand placements, passes for Event access, and other benefits WWM will provide to the City for the Event (collectively, the "Sponsorship Benefits"). In connection with its promotion of the Event, WWM shall have the right to make reasonable modifications to the placements of the City's name and logo and other Sponsor Materials (as defined in Section 3 below) that do not materially diminish the value of the sponsorship provided or any of the specific Sponsorship Benefits.

2. Fees and Other Consideration.

(a) In consideration of the licenses granted and other benefits conferred by WWM to the City in this Agreement, the City shall: (i) become a marketing sponsor of the Event ("Sponsorship"), as more fully elaborated on Exhibit A, and (ii) provide the additional consideration, if any, described on Exhibit A hereto.

(b) In exchange for the Sponsorship, the Sponsorship Fee set forth on Exhibit A shall be due and payable from the City on the respective payment date set forth on Exhibit A. The Sponsorship Fee (and any other applicable consideration) stated herein does not include taxes, duties or levies, however designated or computed. The Sponsorship Fee is non-refundable except as otherwise set forth in Section 6 and Section 14.

3. Materials; Deadlines. WWM's obligations herein are contingent upon the City's providing any necessary names, artwork, logos, video, written copy or other information or materials, including any City materials that may be included in a gift bag or otherwise provided at the Event or to speakers or attendees (the "Sponsor Materials") required for WWM's performance of this Agreement, in the form(s) reasonably specified by WWM on or before the deadline date(s) reasonably established by WWM and communicated to the City. WWM reserves the right to reject any assets that are not in the form reasonably specified by WWM.

4. Rights with Respect to Sponsor Materials.

(a) The City shall license and authorize WWM on a limited, revocable, royalty-free, worldwide and non-exclusive basis to reproduce, incorporate, distribute, broadcast, transmit, publicly perform and display, in any media now known or later developed, the Sponsor Materials solely in connection with the Event, including on WWM's website. All Sponsor Materials will continue to be the sole property of the City, and the City shall retain all right, title and interest in and to the Sponsor Materials, except for the limited license rights provided herein. The City reserves all rights, title, and interest under law and equity in and to the Sponsor Materials and any other City intellectual property; and no license or other right to the same beyond that expressly set forth herein is provided to WWM or any third party. Any and all usage or publication of the Sponsor Materials by WWM in any manner or through any media, including for purposes of the Event, will be subject to the City's prior review and written approval (email acceptable), which will not be unreasonably withheld.

(b) The City represents that (i) the City owns all rights, title and interest in and to the Sponsor Materials; (ii) the City has the right, power and authority to authorize WWM to use the Sponsor Materials in the manner set forth in this Agreement and as otherwise approved by the City in accordance with this Agreement; and (iii) the use of the Sponsor Materials as provided or authorized pursuant to this Agreement will not violate or infringe any law or any agreement with or rights of any third party (including, without limitation, any copyright, trademark right or other intellectual property right).

5. Rights with Respect to WWM Materials.

(a) Event Marks and Logos. WWM hereby grants to the City a non-exclusive, royalty-free, limited worldwide license to reproduce and use WWM's Event-associated logos (collectively, "WWM Marks") solely in connection with the City's promotion of its sponsorship of the Event and subject to WWM's prior written approval over all such uses (email acceptable), which approval will not be unreasonably withheld. The City will not obtain any goodwill or any other rights thereto as a result of their use of the WWM Marks, and any goodwill and other rights arising from the City's use of the WWM Marks will inure to the benefit of WWM.

(b) WWM represents that (i) WWM owns all rights, title and interest in and to the WWM Marks; (ii) WWM has the right, power and authority to authorize the City to use the WWM Marks in the manner set forth in this Agreement and as otherwise approved by WWM in accordance with this Agreement; and (iii) the use of the WWM Marks as provided or authorized pursuant to this Agreement will not violate or infringe any law or any agreement with or rights of any third party (including, without limitation, any copyright, trademark right or other intellectual property right).

(c) Video Footage. As further described in Exhibit A, WWM will be responsible for creating video footage of the Event, and will provide the City with footage of the Event, (collectively, the "Video"). As between the parties, WWM shall own all right, title and interest in and to the Video, other than any included Sponsor Materials. The City will have a limited, worldwide, perpetual, royalty-free and non-exclusive license to publish and use the Video (i) on the City's website, social media and email using the embedded player provided by WWM, and provided that the City provides attribution to WWM, and (ii) also for its internal use, including on a worldwide basis with respect to its employees, subsidiaries, business units, and affiliates. The Video may not be used in any other manner or for marketing purposes except as provided in (i) above without the prior express written permission of WWM (email acceptable). EXCEPT AS OTHERWISE EXPLICITLY PROVIDED HEREIN, WWM PROVIDES THE VIDEO ON AN "AS IS" BASIS, AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE VIDEO, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) Photos. WWM will provide the City with WWM selected photos from the Event (the "Photos"). As between the parties, WWM shall own all right, title and interest in and to the Photos, other than any included Sponsor Materials. The City will have a limited, worldwide, perpetual, royalty-free and non-exclusive license to publish and use the Photos on (i) the City's website, social media and email provided that the City provides attribution to WWM, and (ii) also for its internal use, including on a worldwide basis with respect to its employees, subsidiaries, business units, and affiliates. The Photos may not be used in any other commercial manner or for marketing purposes except as provided in (i) above without the prior express written permission of WWM (email acceptable). EXCEPT AS OTHERWISE EXPLICITLY PROVIDED HEREIN, WWM PROVIDES THE PHOTOS ON AN "AS IS" BASIS, AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PHOTOS, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Force Majeure. The performance of this Agreement by either party is subject to acts of God, government authority, disaster, strikes, civil disorders, or other emergencies or event, labor disputes, strikes, any of which make it illegal or impossible to provide the facilities and/or services for the Event (a "Force Majeure Event"). A Force Majeure Event shall not include the bankruptcy of either party or other financial or legal situation, which causes the party to not be able to fulfill its obligations hereunder. The City may cancel this Agreement in the event of a Force Majeure Event by written notice to WWM, effective immediately, without liability and WWM will return any fee, deposit or prepayment paid for the above event to the City within 30 days from the date of such termination notice.

7. Indemnity.

(a) WWM covenants and agrees to INDEMNIFY, DEFEND and HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or

other harm for which recovery of damages is sought that may ARISE OUT OF OR CAUSED BY THE NEGLIGENCE, ACT, ERROR, OR OMISSION OF WWM, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF WWM, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES. THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS ELECTED OFFICIALS, OFFICERS OR EMPLOYEES. IN THE EVENT WWM AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

(b) WWM shall advise the City in writing within 24 hours of any claim or demand against the City or WWM known to WWM related to or arising out of WWM's activities under this Agreement.

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

(d) Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of WWM, 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 WWM or any subcontractor under worker's compensation or other employee benefit acts.

8. Insurance. The parties agree to meet the insurance requirements listed in Exhibit B.

9. Confidentiality. The parties agree to keep the terms and conditions of this Agreement, including, without limitation, the fees, and any other information provided by the other party and identified in writing to the receiving party as being confidential in the course of the negotiation or implementation of the Agreement or reasonably expected to be deemed confidential, given the context in which it is supplied (collectively, "Confidential Information") in the strictest confidence. Neither party shall reveal the other party's Confidential Information to anyone except to employees or agents, who have a need to know same for the purposes of this Agreement, and who are bound by confidentiality obligations, and to legal counsel, accountants and/or auditors, or as required by law. Neither party will use any portion of the other party's Confidential Information for any purpose other than those provided for under this Agreement. "Confidential Information" shall not include any information that (i) is or becomes generally available to the public other than as a result of a wrongful disclosure hereunder; (ii) was independently developed by or on behalf of the receiving party; or (iii) was known to receiving party prior to its disclosure by the disclosing party.

10. Term. The term of this Agreement shall be from the effective date of City Council approval of this Agreement through the occurrence of the Event. The rights granted to the Sponsor Materials and the WWM Marks, as applicable, shall survive (i) to the extent the Sponsor Materials or the WWM Marks are reproduced in printed materials or other tangible goods, for the useful life of such tangible goods, provided that no further versions or copies are made; (ii) in perpetuity in connection with WWM's coverage of the Event; and (iii) in perpetuity in connection with the City's references to its affiliation with the Event. Any rights or obligations contained herein that by their nature should survive termination of the Agreement shall survive, including, but not limited to representations, warranties, intellectual property rights, indemnity obligations and confidentiality obligations, including, without limitation, Sections 2, 4, 5, 7, 9, 10, 11, 12, 13 and 14 hereof.

11. Non-disparagement and Approval. WWM shall not intentionally depict the City in a manner that is inconsistent with instructions provided by the City or in a manner that could reasonably be perceived as negative, derogatory or detrimental to the name, reputation or trademarks of the City. WWM will not authorize or release publicity, or give interviews that make reference to the City, or any of the City's campaigns or events without the prior written permission of the City. No approval by the City shall be deemed to be a statement or opinion by the City that such materials comply with any applicable laws, regulations or rules. WWM must have the City's prior written approval (email acceptable) to use the City's name as a reference or in any marketing materials.

12. Services and Warranties. WWM represents and warrants that (i) the digital and mobile components, including the Video as well as the Photos that will be electronically stored and/or transmitted ("Software") of WWM's deliverables for the Event function in accordance with the Agreement and are merchantable and fit for the purposes set forth herein, and (ii) the Software does not contain any "harmful" or "malicious" code (as such terms are generally defined and understood in the computer programming industry) or programming devices (e.g., viruses, key locks, back doors, trap doors, timers or other disabling devices) which could disrupt the use of the Software or any other data, software or hardware or destroy, damage or make inaccessible software or hardware.

13. Miscellaneous. Should any provision of this Agreement be held to be void, invalid or unenforceable, such provision shall be enforced to the maximum extent permissible, and the remaining provisions of this Agreement shall remain in full force and effect. The failure of either party to partially or fully exercise any right or remedy or the waiver by either party of any breach shall not be construed as a waiver, estoppel with respect to, or limitation of that party's right to subsequently enforce and compel strict compliance or assertion of a remedy. Neither party may assign this Agreement or any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Texas, without regard to principles of conflicts of law. Venue for all legal proceedings between the parties arising out of this Agreement, or breach thereof, shall be in the state and federal courts with competent jurisdiction in Bexar County, Texas. All notices or other communications pursuant to this Agreement shall be in writing and shall be delivered personally, by overnight messenger, by confirmed facsimile transmission, or via confirmed email to the person signing this letter, at the addresses set forth herein. This Agreement contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings, whether written or oral, regarding the subject matter hereof and may only be amended by a written instrument executed by both Sponsor and WWM. Nothing contained herein shall imply any partnership, joint venture or agency relationship between WWM and the City and neither party shall hold themselves out to third parties in any way inconsistent therewith or have the power to obligate or bind the other in any manner whatsoever, except to the extent herein provided. In the event this Agreement is signed in the name of a corporation, partnership, association, club or society, the individual signing it represents that he or she has full authority to sign and deliver this agreement. WWM represents and warrants that WWM is not currently excluded, debarred, suspended or otherwise ineligible to participate by any federal department or in any federal department programs or in any federal procurement or nonprocurement programs ("Ineligible Person"), and that WWM is not using an Ineligible Person individual and will not use an Ineligible Person in the future, in any capacity, in connection with the performance of the Services hereunder. This Agreement may be executed in counterparts, each of which will be an original and all of which together constitute one agreement.

14. Termination.

(a) For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement's term as stated in Section 10, or earlier termination pursuant to any of the provisions hereof.

(b) Methods of Termination.

(i) With Cause. In the event of any party's failure to materially perform or failure to comply with any material covenant or provision required under this Agreement, the non-failing party may deliver written notice of such failure to the failing party. The failing party shall have fifteen (15) calendar days after receipt of the written notice to cure such failure. If the failing party fails to cure the default within such fifteen-day cure period, the non-defaulting party shall have the right, without further notice, to terminate this Agreement.

(ii) Insolvency. Upon written notice, which notice shall be provided in accordance with this Agreement, either party may terminate this Agreement as of the date provided in the notice, in the event the other party (i) becomes insolvent or bankrupt, (ii) becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law, or (iii) has a receiver appointed.

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

(iv) Failure to Hold Event. Absent for an event of force majeure, as set forth in Section 6, or for reasons of termination of this Agreement (1) by WWM pursuant to Section 14(b)(i), or (2) pursuant to Section 14(b)(ii) or Section 14(b)(iii), if the Event does not occur in San Antonio prior to December 8, 2015, the City shall have the right to immediately terminate this Agreement upon written notice to WWM.

(c) Effect of Termination

(i) In the event of a termination by WWM pursuant to Section 14(b)(i), WWM shall be entitled to retain all amounts previously paid to it by the City.

(ii) In the event of a termination by the City pursuant to Section 14(b)(i) or Section 14(b)(iv), within 30 calendar days of such termination, WWM shall return to the City all amounts paid by the City pursuant to the terms of this Agreement.

(iii) In the event of a termination pursuant to Section 14(b)(ii) or Section 14(b)(iii), this Agreement will cease and be of no further effect, WWM shall return to the City any amounts paid by the City pursuant to the terms of this Agreement which were not used by WWM towards its obligations to host the Event, including, without limitation, its obligations pursuant to Exhibit A, prior to such termination (with WWM to provide the City with reasonable documentation of such spending), and neither party shall have any further obligations to the other party.

(d) Operations. Upon the effective date of expiration or termination of this Agreement for whatever reason, both the City and WWM shall cease all operations pursuant to this Agreement.

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

15. Non-Discrimination. As a party to this Agreement, WWM 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.

Signature Page to Follow

San Antonio
Page 6 of 11



Sheryl Sculley
City Manager

Tina Brown
Founder and CEO

Approved as to Form:

City Attorney

EXHIBIT A
Women in the World Media, LLC
City of San Antonio Sponsorship
2015 Women in the World Texas Salon

SPONSORSHIP FEE AND OTHER CONSIDERATIONS

- The City shall pay to WWM a cash sponsorship fee of US\$75,000 ("City Sponsorship Fee") within 14 days of the effective date of the Ordinance approving this Agreement. The City will assist in jointly raising an additional US\$125,000 from locally based businesses in San Antonio ("Local Sponsorship"). The total goal will be at least \$200,000 from the City Sponsorship Fee and Local Sponsorship. The City's efforts toward Local Sponsorship will include but not be limited to making introductions, supporting proposals, hosting a luncheon, hiring a fundraiser and making direct requests and selling program advertising. Should the \$125,000 in additional Local Sponsorship be raised and collected, reaching the total goal of \$200,000, every dollar in excess of the \$200,000 raise will pro rata reduce the City Sponsorship Fee. For illustration, should \$205,000 be raised and collected, \$5,000 will be returned to the City, effectively reducing the City Sponsorship Fee to \$70,000. WWM will refund to the City up to a maximum of the \$75,000 City Sponsorship Fee. For clarity, other non Local Sponsorships raised by WWM are not available to the City in terms of offsetting the City Sponsorship Fee.
- The City shall provide the following services if applicable, at no cost to WWM (with any specific usage of any WWM Marks to be approved in advance by WWM in accordance with Section 5(a) of the Agreement):
 - Introduce WWM to potential sponsors of the Event as well as to local philanthropists, donors and organizations with whom WWM could potentially partner on the Event or future events.
 - List development – research and development target list of potential attendees/invitees.
 - Leverage CVB marketing assets to promote event such as website presence, social media, newsletter, etc.
 - Press release posting and dissemination.
 - Inclusion in City of San Antonio Communications Channels (targeting employees and citizens), including:
 - Website banner
 - eConnections Newsletter
 - dot.Gov newsletter
 - TVSA Channel 21
 - Social Media Channels
 - Event support, including:
 - San Antonio Police Department security staffing
 - Road closures/barricades as needed
 - Permits as needed
 - Site Services
 - SACVB Temporary event staff

SPONSORSHIP BENEFITS

- The City will be identified as a Leadership Level Sponsor of the Event.

- The City will have use of WWM Marks in connection with the sponsorship of Event, as set forth in Agreement, with all specific uses to be approved by WWM in advance of such use in accordance with Section 5(a) of the Agreement.
- The City will receive 25 invites to disseminate to appropriate guests.
- WWM will assign a dedicated event producer to interface with the City and the City will have the opportunity to offer ideas and suggestions concerning the Event schedule, ticketing, advertising and marketing, logistics and presentations. The City acknowledges and agrees that WWM retains all rights to final decisions regarding the Event and all related programming.
- Opportunity for a City designee (to be approved by WWM in its sole discretion) to participate as a co-host at the Event (timing and panel participants to be chosen by WWM producers).
- The City will be provided a reasonable opportunity to distribute no more than one item or piece of literature in the event gift bag (of which WWM currently anticipates there will be approximately 300), subject to WWM's reasonable requirements and space limitations.
- The City shall provide WWM with branding (such as a video or marketing campaign) to be showcased as a Public Service Announcement prior to the programming session, prior to the luncheon or during the break to the full audience. The PSA cannot be longer than 60 seconds.
- The City may provide host Tina Brown with 1-2 sentences of messaging to be delivered if she is asked about the Event.

BRAND RECOGNITION

- The City's name and/or logo and/or URL (VisitSanAntonio.com) will be incorporated into the co-branded Event marketing campaign, including print, digital and social marketing promotion, if any, in a manner (including as to look and feel, frequency, etc.) as WWM will determine, acting reasonably. As a Leadership Sponsor, The City's recognition will be at the same level as other Leadership Sponsors and appear only when Leadership sponsors are given credit.
- The City's name and/or logo and/or URL (VisitSanAntonio.com) will be mentioned and displayed on Event invitation, advertisements, press releases and marketing materials (if any), in a manner (including as to look and feel, frequency, etc.) as WWM will determine, acting reasonably. As a Leadership Sponsor, The City's recognition will be at the same level as other Leadership Sponsors and appear only when Leadership sponsors are given credit.
- The City's logo will be mentioned and displayed on the WWM website and on the landing page on the Event website with a link to VisitSanAntonio.com, in a manner (including as to look and feel, frequency, etc.) as WWM will determine, acting reasonably. As a Leadership Sponsor, The City's recognition will be at the same level as other Leadership Sponsors and appear only when Leadership sponsors are given credit.
- The City's name and/or logo and/or URL (VisitSanAntonio.com) will be mentioned and displayed on-site including Event red carpet "step and repeat" and on co-branded Event signage and printed materials, in a manner (including as to look and feel, frequency, etc.) as WWM will determine, acting reasonably. As a Leadership Sponsor, The City's recognition will be at the same level as other Leadership Sponsors and appear only when Leadership sponsors are given credit.
- Social Promotion to include tweets using an agreed hashtag and @VisitSanantonio from Women in the World social media leading up to and during the Event, (ii) tweets from Women in the World's social media channels mentioning the City leading up to and during the Event, and (iii) Facebook or other social media posts mentioning the City.

- The City will have one full-page advertisement within the Event program guide.
- The City will have a welcome table at the Event in the front-of-house press/reception space, which shall include the City's branding and logos, which shall be subject to reasonable approval by WWM.
- Any and all mentions and/or displays of the City's name, logo, and website link for purposes of the Event, including all of those set forth above and below, will be subject to the provisions of the Agreement governing "Sponsor Materials".

MAKE-GOODS

- If for any reason, WWM is unable to provide the City with any of the material rights or benefits hereunder or any portion thereof, the parties shall negotiate in good faith to identify substitute rights and benefits of equal value to be provided to the City that are reasonably acceptable to the City. Nothing in this section shall affect the parties' remedies contained elsewhere in this Agreement.

EXHIBIT B
Women in the World Media, LLC
City of San Antonio Sponsorship
2015 Women in the World Texas Salon

(a) Prior to the commencement of any work under this Agreement, WWM shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Convention and Visitors Bureau, which shall be clearly labeled "Women in the World" 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 Convention and Visitors Bureau. 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 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.

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

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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 <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 f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

(d) WWM agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of WWM herein, and provide a certificate of insurance and endorsement that names the WWM and the CITY as additional insureds. Respondent 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.

(e) 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). WWM 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 in this Agreement within 10 days of the requested change. WWM shall pay any costs incurred resulting from said changes.

(f) WWM agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and
- 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.

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

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

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

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

(k) 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.

(l) WWM and any subcontractors are responsible for all damage to their own equipment and/or property.

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

This Agreement to Use Funds of the City of San Antonio (the “Agreement”) is entered into by and between 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 Ordinance No. 2015-09_--_ passed and approved on September ____, 2015 and the Hemisfair Park Area Redevelopment Corporation, (hereinafter referred to as "HPARC"), a Texas Local Government Corporation under as defined under Chapter 431 of Texas Transportation Code. The CITY and HPARC may separately be referred to herein as the “Party” and together, as the “Parties.”

ARTICLE I. PURPOSE

1.01 The purpose of this Agreement is to establish the terms and conditions of a transfer of public money from CITY to HPARC to be used to lessen the burdens of the CITY by assuming in part the City’s obligations or objectives that relate to the planning, development, operation and maintenance of publicly-owned property.

1.02 HPARC 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 sixty (60) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of sixty (60) days following the day on which such notice is sent. If either Party exercises the option of terminating this Agreement, then upon termination any and all unused funds either allocated and in possession of HPARC 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 HPARC under the terms of this Agreement; or (2) retain any and all funds allocated but not distributed to HPARC.

1.03 HPARC 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 Center City Development and Operations Department (CCDO) of the City of San Antonio (“Director”) to further the intent of this Agreement. Therefore, HPARC 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 HPARC does not agree to any changes, HPARC shall have the option of terminating this Agreement by giving sixty (60) days written notice to CITY in compliance with Article XVIII of this Agreement. HPARC shall have the right to exercise such option within sixty (60) days of receipt of notice of any such revisions.

1.04 HPARC 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

HPARC with as much advance notice of a potential funding reduction as is possible to allow HPARC to make budget adjustments.

1.05 In no event shall CITY be liable for any expense of HPARC not eligible or allowable hereunder. "Eligible expenses" shall be those expenses directly related to HPARC personnel, fundraising efforts, Public-Private partnership initiatives, consultants and may include "Other expenses" that the Director, in the Director's sole discretion, determines are eligible expenditures under this Agreement. In order to determine if an expense is allowable as an "Other expense", HPARC shall seek the Director's written approval prior to the expenditure.

1.06 HPARC covenants and agrees that HPARC 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 HPARC, 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 HPARC. 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 HPARC under this Agreement and that the HPARC 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 Director, or her designee, as administrator of this Agreement. The City Manager may designate a new administrative entity by giving HPARC notice thereof, pursuant to Article XIX. With regards to this Agreement, HPARC shall report to the Director or her designee, who may modify the goals and performance measures of this Agreement as necessary to further the intent of the Agreement.

2.03 Pursuant to Ordinance No. 2015-09-__-____, passed and approved on September ____, 2015, CITY agrees to transfer, in accordance with the terms and conditions of this Agreement, a cumulative total of

ONE MILLION SIX HUNDRED EIGHTY-SEVEN THOUSAND, SIX HUNDRED AND NINETY FOUR DOLLARS (\$1,687,694.00) to HPARC throughout the Term of this Agreement. These funds shall be deposited in an account separate from all other HPARC funds and shall not be commingled with any other account of HPARC. 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 "CITY FUNDS." The CITY FUNDS shall be used by HPARC only for the purpose of assisting in the development and redevelopment of Hemisfair and its surrounding area, including without limitation the planning of such development and redevelopment.

2.04 Under no circumstances will the CITY 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, HPARC 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 HPARC 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. HPARC, 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 HPARC 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

3.01 HPARC shall utilize up to ONE MILLION SIX HUNDRED EIGHT SEVEN THOUSAND, SIX HUNDRED NINETY FOUR DOLLARS (\$1,687,694.00) for the funding or partial funding of HPARC's operating expenses, including personnel, fundraising, public private partnership ("P3") initiatives and other expenses. These funds shall be advanced to HPARC in one payment not later than sixty (60) days following the passage of an ordinance authorizing this Agreement and its execution, whichever is later. In consideration of funds received, HPARC will undertake the following tasks:

- Complete financial analysis to drive to future self-sustainability by 2020.
- Obtain pledge(s) of major donor recognition totaling \$500,000.00 for Yanaguana Garden by June 2016
- Raise \$250,000.00 or more for Civic Park reconciliation as evidenced by contributions or written pledges received by December 2015
- Raise \$2 million of capital for Civic Park design and construction by September 2016
- Complete P3 selection process for Hemisfair Boulevard developable site, and secure entitlements for the proposed development
- Publish a 2016 calendar of events by January 31, 2016 for Yanaguana Garden, including food offerings, art festivities, music and other events that attract guests from the entire community
- Open at least two locally-owned, park-activating businesses in the Southwest Quadrant by March 30, 2016

- Complete P3 selection process for the Northwest Quadrant developable sites
- Develop and begin implementation of a Hemisfair parking plan
- Complete reconciliation between developer and civic park schematic designs before finalization of Northwest Quadrant P3 approval by Council
- Work with the Office of Historic Preservation to submit State Historic Tax Credits from completed Hemisfair Projects and obtain funds in calendar year 2016
- Work with City to create Hemisfair TIRZ by end of 2016 calendar year
- Collaborate with the City in its attraction of a user for the River Building

3.02 HPARC acknowledges that in the event the aforementioned tasks are not met by September 30, 2016, the City may elect to decrease the amount of funding for Fiscal Year 2017.

ARTICLE IV. COMPLIANCE

4.01 CITY's CCDO is assigned monitoring responsibility for this Agreement.

- A. HPARC 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 HPARC'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. HPARC understands that CITY may require any and all books, records and files of HPARC necessary to ensure HPARC'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 HPARC begins, then HPARC is required to maintain said records until such time as the audit or investigation is completely finished, plus three (3) years thereafter.
- D. HPARC 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.

- 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, HPARC shall immediately refund such amount to CITY; provided, however, that such refund may be payable with CITY FUNDS. HPARC further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CCDO 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 HPARC as requested by CITY is grounds for termination of this Agreement.
 - G. HPARC 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. HPARC 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 abuse of funds.
- 4.02. HPARC agrees to establish internal procedures that ensure employees funded or partially-funded by this Agreement have an established complaint and grievance policy.
- 4.03 HPARC 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 CITY FUNDS, all applicable 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 Non-Discrimination. As a party to this contract, HPARC 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.
- 4.05 As a condition of entering into this Agreement, HPARC 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, HPARC 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 HPARC retaliate against any person for reporting instances of such discrimination.

HPARC 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. HPARC 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. HPARC 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, HPARC shall use a good faith effort to use the employment and training programs of CITY.

4.07 HPARC will complete and submit CITY's Ethic's Disclosure Form prior to HPARC'S receipt of any CITY FUNDS.

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

ARTICLE V. RECORDS, REPORTS AND AUDIT RIGHTS

5.01 HPARC 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 CITY FUNDS, including work by subcontractors. Such books and financial records, together with any other documentation necessary for verification of HPARC'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. HPARC'S record system shall contain sufficient documentation to provide full support and justification for each expenditure made from CITY FUNDS. CITY's Auditor or his designee may review and approve HPARC'S system of internal accounting and administrative controls at any time during the term of this Agreement to assure compliance by HPARC.

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

5.03 HPARC shall submit to the 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 HPARC'S fiscal year end. The audited financial statement shall include a detailed

schedule of receipts and expenditures of CITY FUNDS by budgeted cost category. It is imperative any auditor performing an audit of HPARC read the entire Agreement, including all attachments, if any, between the CITY and HPARC, since the budget and financial compliance of the Agreement is only a portion of the total contractual obligation. HPARC shall submit the audited financial statements and any management letter prepared by the independent CPA to both the Center City Development Office, 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, HPARC shall cause to be delivered to 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. HPARC understands and agrees that CITY shall have an ex officio representative on the Board of Directors and the Executive Committee, as outlined in its Articles of Incorporation and Bylaws.

ARTICLE VI. INSURANCE

6.01 HPARC agrees that upon entering a contract for infrastructure or capital improvement construction, if any, to be paid for out of the CITY FUNDS, HPARC, 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 HPARC 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 HPARC, 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 CITY FUNDS, and the insurance shall remain in force during the term of the contract, or any extension thereof.

6.04 HPARC 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, Center City Development Office, 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 HPARC'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 using the CITY FUNDS provided under this Agreement. 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 CITY FUNDS, then HPARC, 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 CITY FUNDS-funded infrastructure work commences.

7.02 By subsequent written agreement, HPARC, by Board resolution, and CITY, after approval by the City's Director of Transportation and Capital Improvements Department 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 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 HPARC 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 CITY 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 HPARC shall promptly pay when due all taxes, license fees, permit fees, debts and obligations incurred by HPARC 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. HPARC 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, HPARC shall submit all designs including all drawings, plans, specifications and estimated costs for infrastructure development or capital improvements to be paid from CITY 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 HPARC and CITY acknowledge they are governmental units of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Nothing in this Agreement waives any governmental immunity available to HPARC or City under the laws of the State of Texas.

8.02 HPARC 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

arising out of this Agreement, including any acts or omissions of HPARC, any agent, officer, director, representative, employee, consultant or subcontractor of HPARC, 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 HPARC 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 OR HPARC UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.03 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. HPARC shall advise the CITY in writing within 48 hours of any claim or demand against the CITY or HPARC known to HPARC arising out of HPARC's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at HPARC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving HPARC of any of its obligations under this paragraph.

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

8.05 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of HPARC, 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 HPARC 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 HPARC 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 HPARC:

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, HPARC 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 Center City Development Office, 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 HPARC's personnel files, as appropriate, with copies to CITY.

ARTICLE X. CONFLICT OF INTEREST

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

ARTICLE XII. DEFAULT

12.01 If HPARC 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 then-unexpended CITY FUNDS. All costs and expenses of finishing applicable projects shall then be the sole responsibility of HPARC.

12.02 If HPARC fails to comply with the material terms of any other contract or agreement to which CITY and HPARC are parties, although unrelated to this Agreement, CITY through its City Manager or her designee may, by written notice, direct HPARC 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 CITY FUNDS.

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

ARTICLE XIII. ASSIGNMENT

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

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, HPARC 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.

16.03 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 HPARC hereunder shall cease and terminate after audited financial reports document the expenditure of all CITY FUNDS, except that the obligations of HPARC under Article V hereof shall cease and terminate one (1) year after the disbursement of all CITY 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 HPARC:

Andres Andujar
Chief Executive Officer
Hemisfair Park Area Redevelopment Corporation
434 South Alamo Street
San Antonio, Texas 78205

If to CITY:

Director
Center City Development and Operations 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

HPARC

Lori Houston
Assistant City Manager

Andres Andujar
Chief Executive Officer

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

AGREEMENT TO USE FUNDS
of the City of San Antonio

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (City) acting by and through its City Manager, pursuant to Ordinance No. 2015-09-10----- passed and approved on September 10, 2015, and SA2020 (hereinafter referred to as SA2020, or Recipient) by and through its President and Chief Executive Officer, **WITNESSETH:**

WHEREAS, the City wishes to provide support to SA2020 to meet and achieve identified goals and targets set out in the SA2020 Report; and

WHEREAS, the City will provide funding to SA2020 to provide the aforementioned services as part of the effort to meet and achieve identified goals and targets set out in the SA2020 Report; and

WHEREAS, the City Council for the City has determined and found that the goals and targets set out in the SA2020 Report serve a public purpose that include, the promotion of public health and welfare, and economic development; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the citizens of the City of San Antonio, the parties herein agree as follows:

1. This Agreement shall commence immediately upon execution and shall terminate on September 30, 2016.
2. In consideration of Recipient's performance, in a satisfactory and efficient manner as determined by City, of all services and activities set forth in this Agreement, City agrees to reimburse Recipient up to a total amount not to exceed \$167,660.00, for data collection and analysis, partnership collaboration and support, and community engagement activities, as further set out in **Exhibit A**, attached hereto and incorporated herein for all purposes.
3. Recipient understands and agrees to abide by and adhere to all applicable federal, state and local, laws, rules and regulations in the use of the funds, including all bidding requirements that the City is required to perform pursuant to Chapter 252 of the Local Government Code, as applicable. Recipient agrees to provide City with invoices for the expenditures under this Agreement monthly from the date that Recipient makes such expenditures. All requests for reimbursement shall be submitted to the City at the address provided in Section 12. City shall reimburse Recipient on a monthly basis upon receipt of approved invoices from Recipient. The total of all reimbursement provided to Recipient shall not exceed the amount set forth above in Section 2.
4. Accounting records for all expenditures shall be maintained by Recipient in accordance with generally accepted accounting practices. All of the above-described records shall be subject to audit by the City or its contracted auditor.
5. This Agreement is not assignable and funds received as a result hereof shall only be used by the parties stated herein.

6. In the event that Recipient fails to meet any of its obligations under this Agreement, fails to use the funds for the purposes set out herein, Recipient shall refund to the City the total amount provided under this Agreement. Recipient shall pay City such funds no later than thirty (30) days from the date City requests such funds from Recipient.
7. 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.
8. **INSURANCE**
Recipient shall be responsible for insuring its employees and sub-recipients for Worker's Compensation or Alternative Plan. If a Worker's Compensation Policy is maintained, then for the duration of this Agreement, Recipient will attach a waiver of subrogation in favor of the City. Recipient shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the City be required to maintain any insurance coverage for Recipient.
9. **INDEMNITY**
Any and all of the employees of Recipient, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of Recipient 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 Recipient.

Recipient indemnifies, saves, and holds harmless the City against all claims, demands, actions or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any Workers' Compensation claim of whatsoever character arising herein.
10. Recipient 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.
11. For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City: Edward Benavides
Chief of Staff, City Manager's Office
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

Recipient:

President & CEO
SA2020
112 E. Pecan, Suite 1100
San Antonio, TX 78205

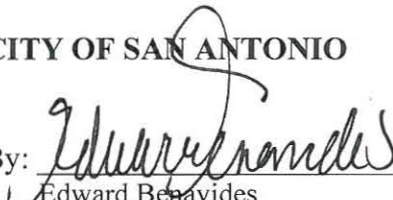
Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

13. If any provision of this Agreement is for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.
14. The signer of this Agreement for Recipient represents, warrants, assures and guarantees he or she has full legal authority to execute this Agreement on behalf of Recipient and to bind Recipient to all of the terms, conditions, provisions and obligations herein contained.
15. 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 contracts, either oral or written.

IN WITNESS OF WHICH this Agreement has been executed on this 10th day of Sept., 2015.

CITY OF SAN ANTONIO

By:


Edward Benavides
Chief of Staff, Office of the City Manager

SA2020

By:



President & CEO

APPROVED AS TO FORM:



City Attorney

Exhibit “A”

SA2020 Deliverables

SA2020 will provide the following core deliverables related to data analysis, nonprofit capacity building, and community engagement:

- a. Identification of gaps and assets aligned to data
- b. Broadened awareness of strategies and programs related to data
- c. Direct Outcomes Evaluation
- d. Ongoing support of City of San Antonio engagement needs
- e. Updated and enhanced website
- f. Citywide Progress Report on all 58 SA2020 Indicators
- g. Development of an Online Outcomes Reporting Form
- h. Individualized Partner Performance Report tied to SA2020 Indicators
- i. An increased number of nonprofits that connect programs/strategies to outcomes related to SA2020 goals and utilize SA2020.org for engagement
- j. Enhanced communication of SA2020 progress to community and increased motivation for community to act
- k. Update and analysis of all indicators, gaps and assets on a regular basis

AGREEMENT TO USE FUNDS

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (City) acting by and through its Director of the San Antonio Public Library, pursuant to Ordinance No. 2015-09-10-_____, passed and approved on September 10, 2015, and the San Antonio Public Library Foundation (hereinafter referred to as Recipient) by and through its President and CEO, **WITNESSETH:**

WHEREAS, City of San Antonio has identified funds in the annual capital and operating budget for Fiscal Year 2015-2016 for support of the annual Book Festival event in San Antonio; and

WHEREAS, City Council hereby finds that such expenditure serves a municipal public purpose of promoting the welfare of the community by advancing literacy through access to literature and authors; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the citizens of the City of San Antonio, the parties herein agree as follows:

1. This Agreement shall commence immediately upon execution and shall terminate upon the completion of all activities contemplated by this agreement.
2. In consideration of Recipient's performance, in a satisfactory and efficient manner as determined by City, of all and activities set forth in this Agreement, City agrees to reimburse Recipient in an amount not to exceed \$50,000.00, for all eligible expenses incurred in organizing the annual Book Festival in San Antonio.
3. Recipient understands and agrees to abide by and adhere to all applicable federal, state and local laws, rules and regulations in the use of the funds, including all bidding requirements that the City is required to perform pursuant to Chapter 252 of the Local Government Code, as applicable. Recipient agrees to provide City with invoices for the expenditures under this Agreement no later than thirty (30) days from the date that Recipient makes such expenditures. All requests for reimbursement shall be submitted to the City of San Antonio Public Library at the address provided in Section 12.
4. Accounting records for all expenditures shall be maintained by Recipient in accordance with generally accepted accounting practices or such other reasonable accounting practices adopted by Recipient. All of the above-described records shall be subject to audit by the City or its contracted auditor.
5. Any literature, signs, or print advertising of any type appearing on any medium which refers to, or which is paid for by funds received as a result of this Agreement shall contain the words, "Paid for by The City of San Antonio."
6. This Agreement is not assignable and funds received as a result hereof shall only be used by the parties stated herein.
7. In the event that Recipient fails to meet any of its obligations under this Agreement or fails to use the funds for the purposes set out herein, Recipient shall refund to the City the total amount provided under this Agreement. Recipient shall pay City such funds no later than thirty (30) days from the date City requests such funds from Recipient.

8. 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.
9. **INSURANCE:** Recipient shall be responsible for insuring its employees and sub-recipients for Worker's Compensation or Alternative Plan. If a Worker's Compensation Policy is maintained, then for the duration of this Agreement, Recipient will attach a waiver of subrogation in favor of the City. Recipient shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the City be required to maintain any insurance coverage for Recipient.
10. **INDEMNITY:** RECIPIENT 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 RECIPIENT'S activities under this AGREEMENT, including any acts or omissions of RECIPIENT, any agent, officer, director, representative, employee, consultant or subcontractor of RECIPIENT, 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 RECIPIENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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.

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

11. As a party to this Agreement, Recipient 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.

12. For purposes of this Agreement, all official communications and notices between 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
San Antonio Public Library
600 Soledad, 4th Floor
San Antonio, Texas 78205

Recipient: President and CEO
San Antonio Public Library Foundation
625 Shook Avenue
San Antonio, Texas 78212

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.

13. If any provision of this Agreement is for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.
14. The signer of this Agreement for Recipient represents, warrants, assures and guarantees he or she has full legal authority to execute this Agreement on behalf of Recipient and to bind Recipient to all of the terms, conditions, provisions and obligations herein contained.
15. 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 contracts, either oral or written.

IN WITNESS OF WHICH this Agreement has been executed on this ____ day of _____, 2015.

CITY OF SAN ANTONIO

**SAN ANTONIO PUBLIC LIBRARY
FOUNDATION**

By: _____
Ramiro S. Salazar
Director

By: _____
Tracey Bennett
President and CEO

APPROVED AS TO FORM:

City Attorney

EVENT SUPPORT AGREEMENT

STATE OF TEXAS §
 §
 COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to Ordinance No. 2015-09-10-____, passed and approved on the 10th day of September, 2015 and Luminaria, by and through its Board President (“Contractor”), both of which may be referred to herein collectively as the “Parties”.

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

I. DEFINITIONS

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

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

“Contractor” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of City’s Department for Culture and Creative Development.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2015 and terminate on December 31, 2016.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor shall be responsible for the production, operation and management of the Luminaria events in fiscal year 2016 (“Events”). Specifically, Contractor shall provide the following services for the Events:

- 3.1.1 Contracts with performers/artists;
- 3.1.2 Marketing;
- 3.1.3 Production of event and equipment rental;
- 3.1.4 Security;
- 3.1.5 Operational and Administrative costs related to production of Events.

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

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed **\$ 350,000** as total compensation, to support the Events. Contractor shall be paid as follows:

- 4.1.1 City shall pay Contractor **\$ 200,000** upon final execution of the Agreement. Contractor shall invoice City for such payment.
- 4.1.2 City shall pay the remaining compensation due under this Agreement on a reimbursement basis. After Contractor presents receipts equal to the payment made under Subsection 4.1.1, Contractor may begin invoicing City on a monthly basis for the remainder of the funds due.
- 4.1.3 City shall pay all valid and approved invoices within 30 days of receipt, subject to the provisions of Sections 3.2 and 4.3.
- 4.1.4 In the event this Agreement is terminated early or if services do not satisfy the requirements of Sections 3.2, Contractor shall return any unearned funds received under Subsection 4.1.1.

4.2 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in Section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Final payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor 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.

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

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

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

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

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

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

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

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this Section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such 15-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

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

7.6 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or

pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

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

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

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

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Felix Padron, Director
Department for Culture and Creative Development
115 Plaza de Armas, Ste. 102
San Antonio, TX 78205

If intended for Contractor, to:

Luminaria
Attn: Kathy Armstrong, Executive Director
PO Box 120188
San Antonio, TX 78212

IX. INSURANCE

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

9.2 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 whereupon City may incur increased risk.

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

<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 	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

** if transportation of participants is conducted	
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9.4 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 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
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional 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.

9.6 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 Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 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.

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

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

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

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

X. INDEMNIFICATION

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, contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

10.3 Contractor shall advise City in writing within 24 hours of any claim or demand against City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement.

10.3 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.

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

XII. ASSIGNMENT AND SUBCONTRACTING

11.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work. All subcontractors require the prior written approval of City.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of 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. Any

references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

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

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

XII. INDEPENDENT CONTRACTOR

12.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, 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 venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Contractor 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 the City or any City agency such as city owned utilities. An officer or

employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a 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.

13.2 Pursuant to the subsection above, Contractor 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. 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.

XIV. AMENDMENTS

14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XV. SPECIAL PROVISIONS

15.1 Indecency. The following is City’s policy statement regarding material and/or performances funded under this Agreement:

15.1.1 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 Subsection 15.1.1.

15.1.2 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.

15.1.3 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.

15.1.4 City shall have the right to terminate this Agreement upon finding that Contractor's activities are not in compliance with the above provisions.

15.2 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 shall update said list or calendar in the event of any modifications or additions.

15.3 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.

XVI. SEVERABILITY

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

XVI. LICENSES/CERTIFICATIONS

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

XVII. COMPLIANCE

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

17.2 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.

XVIII. NONWAIVER OF PERFORMANCE

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

XIX. LAW APPLICABLE

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

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

XX. LEGAL AUTHORITY

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

XXI. PARTIES BOUND

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

XXII. CAPTIONS

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

XXIII. ENTIRE AGREEMENT

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

EXECUTED and AGREED to be effective October 1, 2015.

CITY OF SAN ANTONIO

LUMINARIA

Sheryl Sculley
City Manager

Kathy Armstrong
Executive
Director

Approved as to Form:

City Attorney

**AGREEMENT FOR VOLUNTEER COORDINATOR,
VISITOR ADMISSIONS AND BOOKKEEPING SERVICES
WITH SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC.**

STATE OF TEXAS

COUNTY OF BEXAR

This Agreement is made and entered into by and between the City of San Antonio ("City"), a Texas home-rule municipal corporation, and the San Antonio Botanical Garden Society, Inc. ("Consultant"), a Texas non-profit organization, both of whom may be referred to collectively as the "Parties".

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the Parties here severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

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

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

1.2 "Consultant" is defined in the preamble of this Agreement.

II. TERM

2.1 This Agreement shall commence on October 1, 2015 and terminate on September 30, 2016.

III. SCOPE OF SERVICES

3.1 Consultant shall employ a Volunteer Coordinator to oversee the volunteer program duties previously provided through a City employee. The Volunteer Coordinator will be a full time employee and oversee volunteer programs for the Botanical Garden. Consultant will offer the Volunteer Coordinator benefits comparable to other full time San Antonio Botanical Garden Society, Inc. employees.

3.2 City will continue to make available a telephone and computer for the Volunteer Coordinator.

3.3 Consultant will assume the responsibilities associated with the admissions visitor services. Admissions visitor services shall be defined as collection of revenue for appropriate entrance categories, providing printed receipts to patrons, providing

admissions and/or revenue reports as needed and implementation of reasonable, mutually agreed upon, cash control processes. Consultant staff coverage will be scheduled to ensure that admission functions are operational during all hours that the Botanical Garden is open to the public. These services will be provided through Consultant's employment of Cashiers and a Bookkeeper or similar positions as determined by Consultant. Consultant will offer the Cashiers and Bookkeeper benefits comparable to other full-time and part-time San Antonio Botanical Garden Society, Inc. employees. Admissions revenue will be collected in accordance with License Agreement and will be deposited to City account on a weekly basis, unless otherwise mutually agreed upon. Consultant may retain revenue adequate to cover City's proportional share of credit card fees associated with collection of Admissions, which shall be reviewed annually.

3.4 In addition, Consultant shall assure the adequate Consultant staff or third party contact is hired to reasonably secure the property at the end of each Botanical Garden operating day. Reasonably securing the property will include checking all entrance gates and appropriate buildings to assure they are locked, security systems are appropriately alarmed.

IV. COMPENSATION TO CONSULTANT

4.1 City agrees to reimburse Consultant an amount not to exceed \$160,000.00 as total compensation for the Scope of Services during each fiscal year of the term of this Agreement, to include a) base salary, Employer Federal Insurance Contributions Act (FICA)/Medicare, state unemployment, health insurance, worker's compensation, life insurance, and 401K matching contribution for employees, b) all costs associated with the third-party security services and c) uniforms, office supplies and IT fees for the Volunteer Coordinator, Cashiers and Bookkeeper. City shall not be obligated or liable under this Agreement to any party other than Consultant for the payment of any monies or the provision of any goods or services.

4.2 On no more than a quarterly basis, Consultant will submit to City a request for reimbursement which will include copies of paychecks detailing gross salary and deductions for the Volunteer Coordinator, Cashiers and Bookkeeper positions, evidence of payment for third-party security services and evidence of payment for uniforms and office supplies for these positions. City shall review the requests for reimbursement and, if acceptable to City, provide reimbursement within thirty (30) calendar days of receipt.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in Section 4.1.

V. OWNERSHIP OF DOCUMENTS

5.1 All work created for this contract shall be deemed work for hire and as such, any and all records, writings, documents or information in whatsoever form and

character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City. No such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

VI. RECORDS

6.1 Consultant shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall notify City promptly in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by City at any time with 30 days' written notice to Consultant.

7.3 Consultant may terminate this Agreement for cause, including non-payment of invoices, but shall be required to provide City 30 days' written notice in accordance with Article VIII. Notice, and an opportunity to cure the default.

7.4 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 Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination.

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

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Director of Parks and Recreation
P O Box 839966
San Antonio TX 78238-3966

If intended for Consultant, to:

San Antonio Botanical Garden Society
555 Funston
San Antonio TX 78209

Attn: Joan Wright, Controller

IX. INSURANCE

9.1 Consultant shall be responsible for insuring the Volunteer Coordinator for Worker's Compensation or Alternative Plan. If a Worker's Compensation Policy is maintained, then for the duration of this Agreement, Consultant will attach a waiver of subrogation in favor of the CITY.

X. INDEMNIFICATION

10.1 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 Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, grantee or subcontractor of Consultant, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT Consultant AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY**

GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 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 AGREEMENT and shall see to the investigation and defense of such claim or demand at **Consultant's** cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving **Consultant** of any of its obligations under this paragraph.

XI. ASSIGNMENT AND SUBCONTRACTING

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

11.2 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant violate this article, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement.

XII. INDEPENDENT CONTRACTOR

12.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. The doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Consultant under this Agreement and that Consultant have no authority to bind City.

12.2 Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Consultant shall not be deemed an employee of City, and shall not be entitled to wages or benefits from City, other than the compensation provided herein.

XIII. CONFLICT OF INTEREST

13.1 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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a 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.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. 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.

XIV. AMENDMENTS

14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant.

XV. SEVERABILITY

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

XVI. NON-DISCLOSURE

16.1 Consultant shall not disclose any information, verbally or in writing, related to this Agreement without the express written consent of the City. Consultant shall

immediately notify City in the event that a third party submits a request for information related to this Agreement.

XVII. COMPLIANCE

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

XVIII. NON-WAIVER OF PERFORMANCE

18.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. 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.

XIV. LAW APPLICABLE

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

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

XX. LEGAL AUTHORITY

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

XXI. PARTIES BOUND

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

XXII. CAPTIONS

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

XXIII. ENTIRE AGREEMENT


23.1 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 same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:

Sheryl Sculley,
City Manager



Mary Ann Beach, President
San Antonio Botanical Garden Society, Inc.

Date: _____

Date: 8.21.15

ATTEST:

City Clerk

APPROVED AS TO FROM:



City Attorney

STATE OF TEXAS §
§
COUNTY OF BEXAR § FUNDING AGREEMENT – SAN ANTONIO PARKS
FOUNDATION

This 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 pursuant to Ordinance No. _____ dated _____, and San Antonio Parks Foundation (hereinafter referred to as “Grantee”), a Texas non-profit corporation.

WHEREAS, Grantee has relied on proceeds generated from producing multiple major free events in public parks within the City of San Antonio, such as the annual New Year’s Eve Celebrate San Antonio, Fest of Tails Kite Festival and Dog Fair, Jazz’SALive at Travis Park, 4th of July Celebration at Woodlawn Lake Park and Twilight in the Park at Travis Park, to fund its operating expenses related to improving San Antonio’s parks; and

WHEREAS, Grantee is a single purpose entity devoted to the preservation, development and acquisition of municipal public parks of the City of San Antonio and has been engaged in this activity for many years; and

WHEREAS, this support has resulted in the donation of many acres of new public park land for the use and enjoyment of the citizens of the City of San Antonio; and

WHEREAS, City and Grantee desire for Grantee to continue to facilitate improvements to San Antonio parks and to provide financial support to park projects; and

WHEREAS, pursuant to Ordinance No. 2010-12-09-1036 the City provided funding of \$100,000 annually for five (5) years to Grantee to conduct activities in support of San Antonio’s parks; and

WHEREAS, City has agreed to provide funding of \$100,000 for one (1) year to Grantee so that they may continue their activities in support of San Antonio’s parks,

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. TERM

1.01 This Agreement shall continue in full force and effect for one (1) year, from October 1, 2015 through September 30, 2016.

II. GENERAL RESPONSIBILITIES

2.01 The funds provided for under this Agreement shall only be used for operating expenses related to the activities of the San Antonio Parks Foundation in substantial conformance with the budget for operating expenses as described in Exhibit A, attached.

2.02 City shall provide \$100,000 for Grantee's operating expenses, commencing October 1, 2015.

2.03 Payment will be made by City to Grantee on a biannual basis on October 30, 2015 and April 30, 2016. City will provide the Funds as outlined below:

2.04 Grantee shall provide to City on a bi-annual basis an invoice thirty (30) days prior to due date to pay Allowable Expenses as outlined in Exhibit A of this Agreement and shall include a budget of anticipated Allowable Expenses for a specified duration of time ranging from not less than thirty (30) days but not longer than sixty (60) days per disbursement.

- a. Grantee shall submit to City an annual report prepared by a certified public accountant listing allowable expenses paid, the payee, and date and amount paid. A copy of an invoice and evidence of payment for each expenditure must be attached to each report. Grantee agrees to provide other supporting documentation as may be requested by City. Grantee will provide annual report within sixty (60) days following termination of this Agreement.
- b. For all disbursements, City will review Grantee's reports and supporting documentation and notify Grantee if any expenditure is determined by City to be outside the permissible parameters of this Agreement and funding for those items will be deducted from subsequent disbursements to Grantee.
- c. If deductions are made from the periodic payments for items that City has determined to be ineligible, Grantee shall have the right to request payment at a later date for an alternate eligible expenditure so that the full potential funding amount may be achieved.
- d. All Funds and accounts into which Grantee may deposit the Funds will be subject to review and/or audit by City.
- 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, and shall continue to be so available for a period of three (3) years. If at the end of three (3) years, there is litigation or if the audit report covering such Agreement has not been accepted, Grantee shall retain the records until the resolution of such litigation or audit.
- f. The City shall not be obligated to any third parties (including any subcontractors of Grantee);

- g. Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given to Grantee for failure to comply with this Agreement.

2.05 Grantee shall provide to City at no cost to City copies of any and all documents or information related to the operating expenses which have been paid for with the funds provided under this Agreement.

2.06 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Board of Directors' President shall be Grantee's designated representative responsible for the management of this Agreement.

2.07 Grantee shall furnish to the Parks and Recreation Department a financial statement for all items funded by or through the City. Such statement shall be prepared by and signed by Grantee's chief financial officer by August 31, 2016.

2.08 Grantee shall furnish to the Parks and Recreation Department an annual report to identify amount of funds raised for capital improvements in City parks and natural areas, amount of land acquired for additional City park space and natural areas, amount of grants obtained for the benefit of City parks system, and any other efforts achieved on behalf of the City parks system. Grantee shall deliver such annual report no later than August 31, 2016.

2.09 The Parks and Recreation Department Director ("Director"), or his or her designee, is responsible for the administration of this Agreement on behalf of City.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee covenants and agrees that it will comply with all Federal, State and Local laws and regulations.

3.02 Grantee covenants and agrees that it shall not engage in any political activities in violation of its tax-exempt status. Prohibited activities include, but are not necessarily limited to the assignment by Grantee of any employee 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.

IV. LEGAL AUTHORITY

4.01 Grantee 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.

4.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

V. ACCOUNT OF FUNDS BY GRANTEE

5.01 Grantee agrees to maintain records that will provide accurate, current, and complete disclosure of the status of any funds received and/or expended pursuant to this Agreement. Grantee further agrees:

- a. That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices.

5.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of five (5) years from the date of termination.

VI. ACCESSIBILITY OF RECORDS

6.01 At any time and as often as City may deem necessary, upon five (5) calendar days written notice, Grantee shall make all of its records pertaining to this Agreement, including all financial accounts into which these funds have been placed, available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

6.02 Grantee agrees and represents that it will cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

VII. MONITORING AND EVALUATION

7.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

7.02 Grantee will refund to the City any expense or charge that is disapproved or disallowed as a result of any audit. In the alternative, Grantee agrees to allow the City to deduct such amount or charge as a claim against future payments.

7.03 Grantee agrees that the funds received under this Agreement shall not be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City.

7.04 Grantee agrees that 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.

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' activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, grantee 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, it s 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' 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.

IX. NONDISCRIMINATION

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

X. CONFLICT OF INTEREST

10.01 Grantee 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 Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

10.02 Grantee 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.

10.03 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 Agreement shall:

- a. Participate in any decision relating to this Agreement 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,
- b. Have any direct or indirect interest in this Agreement or the proceeds thereof.

XI. POLITICAL ACTIVITY

11.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, 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.

XII. CHANGES AND AMENDMENTS

12.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee.

12.02 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.

12.03 The Director of the Parks and Recreation Department may amend this Agreement without further action by City Council in order to revise the Allowable Expenses in Exhibit A of this Agreement.

XIII. ASSIGNMENTS

13.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first obtaining the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third party.

XIV. SEVERABILITY OF PROVISIONS

14.01 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 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.

XV. NON-WAIVER OF PERFORMANCE

15.01 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. In fact, no waiver change, modification or discharge by either Part 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.

15.02 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, privilege, or remedy available to either Part hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XVI. ENTIRE AGREEMENT

16.01 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 is in writing, date subsequent to the date hereof and duly executed by the Parties.

XVII. NOTICES

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

Grantee: San Antonio Parks Foundation
400 N. St. Mary's, Suite 101
San Antonio, Texas 78205

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) calendar days of such change.

XVIII. PARTIES BOUND

18.01 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 herein.

XIX. RELATIONSHIP OF PARTIES

19.01 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 venturers or any other similar such relationship between the Parties hereto.

XX. TEXAS LAW TO APPLY

20.01 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.

XXI. GENDER

21.01 Words of 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.

XXII. CAPTIONS

22.01 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, each of which shall have the full force and effect of an original this the _____ day of _____, 2015.

CITY OF SAN ANTONIO**SAN ANTONIO PARKS FOUNDATION**

By: _____
Sheryl Sculley, City Manager

By: _____
Noah Almanza, President and CEO

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

San Antonio Parks Foundation
Operating budget for City of San Antonio Funds

Personnel Costs	
Executive Vice President (1/5 of the salary)	\$XXX
Project Manager	\$XXX
Office Costs	
Rent	\$XXX
Utilities	\$XXX
Phone/DSL/web service	\$XXX
Postage (includes quarterly newsletter)	\$XXX
Copy machine (lease and copies)	\$XXX
Office supplies	\$XXX
Printing (includes quarterly newsletter)	\$XXX
SUBTOTAL	\$XXX
TOTAL	\$100,000

Proposed 2016 Operating Revenue

PROJECTED REVENUE

Events

COSA	\$100,000 (two \$50,000 payments)
Wildfest	10,000
4 th of July celebration	15,000
JazzSAlive	20,000
LiveGreenFest	50,000
Celebrate San Antonio	20,000
	\$215,000

Other Income

General Donations	\$3,000
Newsletter & Online donations	3,565
Interest paid from other accounts	3,000

TOTAL PROJECTED REVENUE \$224,565

These figures are estimates which are dependent upon some factors such as weather which could affect the outcome. Revenue projections do not include income from grants for restricted park projects.