

# ATTACHMENT IV

STATE OF TEXAS

\* DELEGATE AGENCY CONTRACT WITH

COUNTY OF BEXAR

\* PROJECT NUMBER:

CFDA: 14.218

CITY OF SAN ANTONIO

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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 [REDACTED] of the Division of Grants Monitoring and Administration pursuant to Ordinance No. [REDACTED], dated [REDACTED], and [REDACTED] (hereinafter referred to as "CONTRACTOR").

## WITNESSETH:

**WHEREAS**, the CITY has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended (hereinafter referred to as "the Community Development Act") for utilization in connection with its Community Development Block Grant Fund Operating Budget (hereinafter referred to as the "Grant Fund") for human development services; and

**WHEREAS**, the Division of Monitoring and Administration is designated as the managing CITY department (hereinafter referred to as "Managing City Department") for the CITY; and

**WHEREAS**, the CITY has adopted a budget for the expenditure of such funds, and included therein is an allocation of [REDACTED] and [REDACTED]/100 Dollars (\$ [REDACTED]) in funds for a project entitled, "[REDACTED]" (hereinafter referred to as "Project"); and

**WHEREAS**, the 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 the CITY and in compliance with the Work Statement, affixed hereto and incorporated herein for all purposes as Exhibit "A".

## **II. TERM**

2.1 Except as otherwise provided for pursuant to the provisions hereof, this CONTRACT shall begin on the execution date and shall terminate on the earlier of (a) [REDACTED], or (b) Project completion.

2.2 The CITY shall have the option to renew this CONTRACT for an additional period not to exceed one (1) year, subject to (a) the CITY's receipt of additional monies sufficient to fund the renewal term; (b) CONTRACTOR satisfactorily meeting the performance requirements of this CONTRACT, as solely determined by the CITY; and (c) the prior approval by the City Council for the City of San Antonio of such contract renewal, as evidenced by an ordinance duly passed and approved.

## **III. CONSIDERATION**

3.1 In consideration, the CITY will reimburse CONTRACTOR for costs incurred in accordance with the Project Budget approved by the City Council for the City of San Antonio in Ordinance No. [REDACTED]. Said Project Budget is affixed hereto and incorporated herein for all purposes as Exhibit "B". It is specifically agreed that reimbursement hereunder shall not exceed the total amount of \$ [REDACTED].

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

\$ [REDACTED] Community Development Block Grant (CDBG).

Consequently, CONTRACTOR agrees to comply with Sections I, II- Exhibit "A" and III- Exhibit "A" of the Technical Workbook, affixed hereto and incorporated herein for all purposes as Exhibit "C", as may be amended from time to time, and the Special Provisions, affixed hereto and incorporated herein for all purposes as Exhibit "F".

3.3 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 Grant Funds to meet the CITY's liabilities hereunder.

## **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 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 XI 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 Exhibit "B" of

this CONTRACT. In no event shall the CITY be liable for any cost of CONTRACTOR not eligible for reimbursement as defined within this CONTRACT.

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. The Director of the Managing City Department may, in his 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. 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 City Council for the City of San Antonio employees. In those instances in which advance payments are authorized:

(a) Advance payments to vendors 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 a check is available from the CITY.

(b) CONTRACTOR must deposit the CITY funds in a separate 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 the CITY funds deposited in such separate account, exceed the FDIC insurance limit, 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 CONTRACTOR's banking institution, maintained on file and be available for CITY monitoring reviews and audits. Advanced funds that cause CONTRACTOR's account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.

4.3 CONTRACTOR agrees that reimbursements of eligible expenses shall be made monthly or bi-weekly, as determined by the Director of the Managing City Department according to standard procedures followed by the CITY's Finance Department.

4.4 CONTRACTOR agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Managing City Department.

4.5 CONTRACTOR shall submit to CITY all final requests for payment no later than forty-five (45) days from the termination date of this CONTRACT, unless CONTRACTOR receives written authorization from the Director of the Managing City Department prior to such forty-five (45) day period allowing CONTRACTOR to submit a request for payment after such forty-five (45) day period.

4.6 CONTRACTOR agrees that the CITY shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the CONTRACTOR).

4.7 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) Identification of the source and application of funds for CITY-sponsored activities. Such records shall contain information pertaining to CITY awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;

(c) Effective control over and accountability for all funds, property, and other assets. CONTRACTOR shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. 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 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 Article XI 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.

4.8 CONTRACTOR agrees that CONTRACTOR's costs or earnings claimed under this CONTRACT will not be claimed under another contract or grant from another agency.

4.9 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 in the financial statements that are applicable to CONTRACTOR's Project. 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.

4.10 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 must immediately, upon receipt, be returned by CONTRACTOR to the CITY.

4.11 Upon execution of this CONTRACT or at any time during the term of this CONTRACT, the CITY's Director of Finance, the CITY Auditor, or a person designated by the Director of the Managing City Department may review and approve all CONTRACTOR's systems of internal accounting and administrative controls prior to the release of funds hereunder.

## **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. At the sole option of the Director of the Managing City Department, CONTRACTOR will either (a) be required to return program income funds to the 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 the CITY within the 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 this 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 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 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. At the sole option of the Director of the Managing City Department, CONTRACTOR will either (a) be required to return program income funds to the 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.

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, the City Manager, as representative of the CITY, the party ultimately responsible for all matters of compliance with U.S. Department of Housing and Urban Development (HUD) rules and regulations, shall have the final authority to render or secure an interpretation.

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 to the operating facility occupied to administer 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 CONTRACTOR's board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal program 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 the CITY to CONTRACTOR shall be deposited into the appropriate bank account immediately or by the next business day after CONTRACTOR's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amounts 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.

## **VII. AUDIT**

7.1 If CONTRACTOR expends \$500,000.00 or more of CITY funds, 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 the Managing City Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to the Managing City Department by CONTRACTOR within fifteen (15) days upon receipt of said report or upon submission of said corrective action plan to the auditor.

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 the Managing City Department within a period of ten (10) days upon CONTRACTOR's receipt of the report.

7.2 CONTRACTOR agrees that if CONTRACTOR receives or expends more than \$500,000.00 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) and CONTRACTOR shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within a period not to exceed one hundred twenty (120) days after the end of CONTRACTOR's fiscal year to the Federal Audit Clearinghouse in Jeffersonville, Indiana. CONTRACTOR may submit reports through the following website: <http://gov.fac@census.gov> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

Upon completion of Form SF-SAC, CONTRACTOR may submit the completed report by mail to:

Federal Audit Clearinghouse  
1201 E. 10<sup>th</sup> Street  
Jeffersonville, Indiana 47132

7.3 If CONTRACTOR expends less than \$500,000.00 of CITY funds, 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.

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

7.5 The CITY reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this CONTRACT at any and all times deemed necessary by the 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 the CITY all accounting and Project records.

“CONTRACTOR shall, during normal business hours, and as often as deemed necessary by the CITY and/or the applicable state, or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this 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 termination, save, and except 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.

The CITY may, in its sole and absolute discretion, require the CONTRACTOR to use any and all of the CITY’s accounting or administrative procedures used in the planning, controlling, monitoring, and reporting of all fiscal matters relating to this CONTRACT, and CONTRACTOR shall abide by such requirements.

7.6 When an audit or examination determines that CONTRACTOR has expended funds or incurred costs, which are questioned by the 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 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 the CITY of the exercise of such option, CONTRACTOR shall provide to the 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 the CITY by cashiers check or money order. Should the CITY, at its sole discretion, deduct such claims from subsequent reimbursements, 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 CONTRACTOR and shall not be paid from any Project funds received by CONTRACTOR under this CONTRACT.

7.7 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 to have the CONTRACTOR pay for such audit from non-CITY resources.

### **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, CONTRACTOR shall furnish to the Managing City Department and the Grantor of the Grant Funds, if applicable, such statements, records, data, all policies and procedures, and information and permit the CITY and Grantor of the Grant Funds, 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 the Managing City Department such reports as may be required by U.S. Department of Housing and Urban Development (HUD), including Performance Records/Reports, a copy of which is affixed hereto and incorporated herein as Exhibit "D". The Performance Records/Reports are to be submitted by CONTRACTOR no later than the tenth (10th) business day of each month. CONTRACTOR ensures that all information contained in all required reports submitted to the CITY is accurate.

8.3 CONTRACTOR agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from the CITY including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this 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. 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 shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3 including, but not limited to, execution of confidential disclosure agreements, regarding the Confidential Information with CONTRACTOR's employees and subcontractors prior to 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 termination of this CONTRACT, CONTRACTOR shall return to the CITY all copies of materials related to the Project, including the Confidential Information.

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 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 the CITY for disposition. If the requested information is confidential pursuant to State or Federal law, CONTRACTOR shall submit to the CITY the list of specific statutory authority mandating confidentiality no later than three (3) 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 the CITY and shall be made available to the CITY at any time. CONTRACTOR further agrees to turn over to the 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 this 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 the CITY agree that the Project shall be and remain the sole and exclusive proprietary property of the CITY. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in the CITY. CONTRACTOR hereby grants, sells, assigns, and conveys to the CITY all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. 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 the CITY. CONTRACTOR agrees to execute all documents reasonably requested by the CITY to perfect and establish the City's right to the Intellectual Property Rights. In the event the CITY shall be unable, after reasonable effort, to secure CONTRACTOR's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, CONTRACTOR hereby irrevocably designates and appoints the CITY and its duly authorized officers and agents as CONTRACTOR's agent and attorney-in-fact, to act for and in CONTRACTOR's behalf and stead to execute and file any such application or applications and to do all other lawfully

permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by CONTRACTOR. 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 forty-five (45) days from the termination date of this CONTRACT, CONTRACTOR shall submit all final client and/or fiscal reports and all required deliverables to the CITY. CONTRACTOR understands and agrees that in conjunction with the submission of the final report, CONTRACTOR shall execute and deliver to the CITY a receipt for all sums and a release of all claims against the Project.

8.8 CONTRACTOR shall provide to the Managing City Department all information requested by the Managing City Department relating to CONTRACTOR's board functions. Information required for submission shall include but may not be limited to:

- (a) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
- (b) Current Bylaws and Charter;
- (c) Terms of Officers;
- (d) Amendments to Bylaws;
- (e) Schedule of anticipated board meetings for current Fiscal Year;
- (f) Minutes of board meetings that are approved by CONTRACTOR's board will become part of the CONTRACTOR's Project records and as such, must be available to the CITY staff upon request, provided; however, CONTRACTOR shall submit to the CITY minutes of board meetings that are approved by the CONTRACTOR's board on a quarterly basis for contracts with the CITY that are in an amount of \$1,000,000.00 or greater;
- (g) Board agenda, to be submitted at least three (3) business days prior to each board meeting.

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 11.3 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 completed Certificate(s)

of Insurance to the Department, which shall be clearly labeled “*insert name of project/contract*” 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. CITY will not accept a memorandum of insurance or binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to CITY. CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the Department. No officer or employee, other than CITY’s Risk Manager, shall have authority to waive this requirement.

(b) CITY reserves the right to review the insurance requirements of this Article XVII 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 whereby CITY may incur increased risk.

(c) A CONTRACTOR’s financial integrity is of interest to CITY; therefore, subject to CONTRACTOR’s right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this 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 below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers’ Compensation	Statutory
2. Employers’ Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury  *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	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
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

c. Hired Vehicles	
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
7. *Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
****Please consult w/ RM to amend the insurance table to suit the scope of your contract****	
*if applicable	

(d) CONTRACTOR agrees to require, by written contract, that all sub-contractors providing goods or services hereunder obtain the same categories of insurance coverage required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that names the CONTRACTOR and the CITY as additional insureds. Policy limits of the coverages carried by sub-contractors will be determined as a business decision of CONTRACTOR. CONTRACTOR shall provide CITY with said certificate and endorsement prior to the commencement of any work by the sub-contractor. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. 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, CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. CONTRACTOR shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within ten (10) calendar days. CONTRACTOR shall pay any costs incurred resulting from provision of said documents.

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

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

(1) 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;

(2) Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy;

(3) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of CITY.

(4) Provide advance written notice directly to CITY of any suspension or non-renewal 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, 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.

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

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

(j) It is agreed that CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this CONTRACT.

(k) 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 CITY shall be limited to insurance coverage provided.

(l) CONTRACTOR and any sub-contractors 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 CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY, directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including, but not limited to, any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, contractor or subcontractor of CONTRACTOR, and each of their respective officers, agents, employees, directors, and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this Section 10.1 shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS 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 the indemnity in Section 10.1 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 twenty-four (24) hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT 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 Section 10.1 and this Section 10.2.

10.3 CITY shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONTRACTOR fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall 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 In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any sub-contractor, 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 sub-contractor under worker's compensation or other employee benefit acts.

## **XI. APPLICABLE LAWS**

11.1 CONTRACTOR certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject CONTRACTOR to suspension of payments, termination of this CONTRACT, and debarment and suspension actions.

11.2 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) Circulars, as applicable to the funds received by CONTRACTOR hereunder:

- (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."

11.3 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:

- (a) Local Government Records Act of 1989 official record retention schedules;

- (b) Government Code Chapter 552 pertaining to Texas Public Information Act;
- (c) Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services; and
- (d) Texas Local Government Code.

In addition to the applicable laws referenced above, CONTRACTOR must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to CONTRACTOR hereunder originated. For example, CDBG contractors are required to follow applicable CDBG regulations.

11.4 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. Specifically, CONTRACTOR agrees to abide by all applicable provisions of the City of San Antonio Ordinance No. 69403 on file in the City Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following non-discrimination, 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.

11.5 CONTRACTOR warrants that any and all taxes that 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 this CONTRACT. 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.

11.6 CONTRACTOR agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

11.7 CONTRACTOR agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies, and procedures as they may be promulgated.

11.8 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.

11.9 CONTRACTOR shall submit to the Managing City Department on an annual basis Form 990 or 990T.

## **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 the CONTRACTOR or the CITY. For breach or violation of this warrant, 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.

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 the 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 the 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 percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity, 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 percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity). CONTRACTOR further warrants and certifies that is 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 the CITY, or if CONTRACTOR should violate any of the covenants, conditions, or stipulations of this CONTRACT, the 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 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, CONTRACTOR's complete and satisfactory performance, of its obligations for which final payment is sought.

13.2 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 beneficial results commensurate with the further expenditure of funds. Such termination by the 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 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, 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, the 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 the CITY, 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. 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 the CITY may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the CITY.

13.4 Should CONTRACTOR be debarred by the CITY pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within the CITY's sole and absolute discretion, be grounds for termination for cause.

#### **XIV. PROHIBITION OF POLITICAL ACTIVITIES**

14.1 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.

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 the Managing City Department. CONTRACTOR shall list the name and number of a contact person from the Managing City Department 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 CONTRACTOR under this CONTRACT may, at the 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 agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.

15.2 CONTRACTOR is permitted to pay its full time employees for the total number of holidays authorized by the City Council for the City of San Antonio employees. If the CONTRACTOR elects to observe more than the total number of holidays authorized by the City Council for the City of San Antonio employees, then such additional days are not eligible for reimbursement under this CONTRACT.

15.3 CONTRACTOR agrees that the job titles and descriptions set forth in the Project Budget (Exhibit "B") 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, as evidenced through a written amendment to this CONTRACT approved by the Director of the Managing City Department.

15.4 CONTRACTOR agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.

15.5 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.

15.6 At the sole discretion of the Director of the Managing City Department, CONTRACTOR may be reimbursed by the 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, 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.

15.7 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.

## **XVI. ADVERSARIAL PROCEEDINGS**

16.1 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.

## **XVII. CITY-SUPPORTED PROJECT**

17.1 CONTRACTOR shall publicly acknowledge that this Project is supported by the CITY as directed by the Managing City Department.

## **XVIII. EQUIPMENT**

18.1 CONTRACTOR understands and agrees that if equipment is authorized in the CONTRACTOR's approved budget, prior approval must be requested and received from the CITY for the purchase of non-expendable items which equal or exceed the single unit cost of \$100.00 and which have an expected lifetime of more than one year, and for groups of items equaling or exceeding the total cost of \$100.00 and which have an expected lifetime of more than one year. CONTRACTOR retains ownership of all equipment/property purchased with funds received through the CITY. It is understood that the terms, "equipment," and "property," as used herein, shall include not only furniture and other durable property, but also vehicles.

18.2 CONTRACTOR shall not use equipment acquired with Community Development Block Grant funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute. CONTRACTOR shall use the equipment for the Project as long as needed, whether or not the Project continues to be supported by Federal funds, but shall not encumber the equipment without approval of HUD. When the equipment is no longer needed for this Project, CONTRACTOR shall use the equipment in connection with CDBG activities. Equipment not needed by CONTRACTOR for CDBG activities shall be transferred to the CITY for its CDBG program or may be retained by CONTRACTOR after compensating the CITY. If the CONTRACT is terminated for cause, CONTRACTOR agrees that title to such equipment/property shall, at the CITY's sole option, revert to the CITY at the CONTRACT's termination. CONTRACTOR agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination for cause of this CONTRACT.

18.3 During the time that equipment is used on this Project, CONTRACTOR shall make it available for use on other projects or programs if such other use will not interfere with the work on this Project. First preference for such other use shall be given to other projects or



programs sponsored by HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible only if authorized by HUD. User charges shall be treated as program income.

18.4 CONTRACTOR shall maintain accurate records on all items obtained with CITY funds to include:

- (a) A description of the equipment, including the model and serial number, or other identification number, if applicable;
- (b) The date of acquisition, cost, and procurement source, purchase order number, and vendor number;
- (c) Information from which one can calculate the percentage of Federal participation in the cost of the equipment;
- (d) An indication of whether the equipment is new or used;
- (e) The vendor's name (or transferred from);
- (f) The location and condition of the equipment and the date the information was reported;
- (g) The property number shown on the property tag; and
- (h) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where CONTRACTOR compensates the CITY or HUD for its share.

18.5 CONTRACTOR shall provide to the CITY an annual physical inventory of equipment and a reconciliation of the results with the equipment records. CONTRACTOR shall investigate any differences between quantities determined by the physical inspection and those shown in the accounting records to determine the causes of the difference. CONTRACTOR shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

18.6 CONTRACTOR is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with CITY funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). CONTRACTOR shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that CONTRACTOR discovers the lost, stolen, missing, damaged, and/or

destroyed equipment/property. The report submitted by CONTRACTOR to the Managing City Department shall minimally include:

(a) A reasonably complete description of the missing damaged or destroyed articles of property, including the cost and serial number and other pertinent information;

(b) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and

(c) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

18.7 CONTRACTOR shall implement adequate maintenance procedures to keep the equipment in good condition. Additionally, all equipment purchased under this CONTRACT shall be fully insured against fire, loss, and theft.

18.8 CONTRACTOR agrees that no equipment purchased with CITY funds may be disposed of without receiving prior written approval from the Managing City Department. Where CONTRACTOR is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return, and all sale proceeds shall be program income, prorated to reflect the extent to which Community Development Block Grant funds were used to acquire the equipment. In cases of theft and/or loss of equipment, it is the responsibility of CONTRACTOR to replace it with like equipment. CITY funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with CITY funds.

## **XIX. TRAVEL**

19.1 The cost associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present.

(a) CONTRACTOR agrees that mileage reimbursement paid to CONTRACTOR's employees shall be reimbursed at a rate no more liberal than the CITY's policy for mileage reimbursement, which is consistent with Internal Revenue Service (IRS) rules. CONTRACTOR further agrees that in order for its employees to be eligible for mileage reimbursement, the employees: 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by the CITY. CONTRACTOR shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with CONTRACTOR.

(b) CONTRACTOR agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this CONTRACT,

CONTRACTOR shall: 1) provide the CITY with detailed documentation of such business travel expense(s), 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the CITY's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such; and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

## **XX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES**

20.1 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 acquisition, construction, operation, maintenance, administration or rehabilitation of a facility to the extent that that facility is used for inherently religious activities, such as worship, religious instruction, or proselytization. CONTRACTOR further agrees not to engage in inherently religious activities, such as worship, religious instruction, or proselytization when using said facility.

## **XXI. DEBARMENT**

21.1 CONTRACTOR certifies that 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.

21.2 CONTRACTOR shall provide immediate written notice to the CITY, in accordance with the notice requirements of Article XXV herein, if, at any time during the term of this CONTRACT, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

## **XXII. ASSIGNMENT**

22.1 CONTRACTOR shall not assign or transfer CONTRACTOR's interest in this CONTRACT or any portion thereof without the written consent of the City Council for the City 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.

## **XXIII. AMENDMENT**

23.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both the CITY and CONTRACTOR and evidenced by passage of a subsequent CITY ordinance, as to the 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 for 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 contract funding during the term of this CONTRACT shall not exceed the foregoing amount;

(b) Modifications to the Performance Measures set forth in Exhibit "C" hereto, so long as the terms of the amendment stay within the parameters set forth in the Statement of Work, also set forth in Exhibit "A" hereto;

(c) Budget line item shifts of funds, so long as the total dollar amount of the budget set forth in 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 Project Budget (Exhibit "B") of this CONTRACT; and

(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.

#### **XXIV. SUBCONTRACTING**

24.1 None of the work or services covered by this CONTRACT shall be sub-contracted without the prior written consent of the Grantor of the grant source, if so required by said Grantor.

24.2 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 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.

24.3 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 the 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.

24.4 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.

## **XXV. OFFICIAL COMMUNICATIONS**

25.1 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:**

Division of Grants Monitoring and Administration  
1400 S. Flores  
San Antonio, Texas 78204  
Attn: Loan Servicing

**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 of the change.

## **XXVI. VENUE**

26.1 CONTRACTOR and the 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.

## **XXVII. GENDER**

27.1 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.

## **XXVIII. AUTHORITY**

28.1 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 the 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 the 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 Managing City Department verification of the foregoing requirements no later than the execution date of this CONTRACT.

## **XXIX. LICENSES AND TRAINING**

29.1 CONTRACTOR warrants and certifies that CONTRACTOR's employees and its subcontractors have the requisite training, license, or certification to provide said services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XXX. INDEPENDENT CONTRACTOR**

30.1 It is expressly understood and agreed that 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 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.

30.2 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.

30.3 Any and all of the employees of CONTRACTOR, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of 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 CONTRACTOR.

## **XXXI. SEVERABILITY**

31.1 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 the CITY, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this 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.

## **XXXII. CONTRIBUTION PROHIBITIONS**

The provisions of Article XXXII shall apply to all contracts considered "high risk" as that term is defined in the City of San Antonio Contracting Policy and Process Manual.

32.1 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-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or

Request for Qualifications (RFQ) until thirty (30) calendar days following the contract award. CONTRACTOR understands that if the legal signatory entering this 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-risk 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.

32.2 CONTRACTOR acknowledges that the CITY has identified this CONTRACT as high risk.

32.3 CONTRACTOR warrants 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 thirty (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 this CONTRACT void.

### **XXXIII. ENTIRE CONTRACT**

33.1 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.

*[Signature page follows.]*

**IN WITNESS WHEREOF,** CITY and SUB-GRANTEE have executed this AGREEMENT effective as of the date last written below.

**CITY OF SAN ANTONIO,**  
a Texas municipal corporation

**CONTRACTING AGENCY:**

By: \_\_\_\_\_  
[Redacted]  
Grants Administrator  
Division of Grants Monitoring  
and Administration

By: \_\_\_\_\_  
[Redacted]

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Redacted]  
Assistant City Attorney

**ATTACHMENTS:**

- Exhibit "A" – Work Statement
- Exhibit "B" – Project Budget
- Exhibit "C" – Technical Workbook
- Exhibit "D" – Performance Records/Reports
- Exhibit "E" – Invoice/Billing Package
- Exhibit "F" – Special Provisions