

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

This Agreement to Use Economic Development Program Funds of the City of San Antonio (the “Agreement”) is entered into by and between BIOMED SA, (hereinafter referred to as "GRANTEE"), a not-for-profit corporation which is a tax-exempt organization as described in Section 501(c)(3) of the Internal Revenue Code, and the CITY OF SAN ANTONIO, a home-rule municipality, situated within Bexar County, Texas (hereinafter called "CITY"), acting by and through its City Manager or designee, pursuant to City Ordinance No. 2016-09-15-_____ passed and approved on September 15, 2016 (collectively, the “Parties”) and pursuant to Article III, Section 52(a), of the Texas Constitution and Chapter 380.002 of the Texas Local Government Code.

RECITALS

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

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

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

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

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

ARTICLE I. PURPOSE

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

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

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

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

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

1.06 GRANTEE covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that GRANTEE shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and GRANTEE, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and GRANTEE. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the GRANTEE under this Agreement and that the GRANTEE has no authority to bind the City.

ARTICLE II. TERM, AUTHORITY, LITIGATION AND ACCOUNT

2.01 The Term of this Agreement shall be for one year, performable upon execution of the Agreement, effective October 1, 2016 through September 30, 2017

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

2.03 Pursuant to City Ordinance No. 2016-09-10-_____, passed and approved on September 15, 2016, CITY agrees to transfer, in accordance with the terms and conditions of this Agreement, a cumulative total of ONE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$100,000.00) to GRANTEE throughout the Term of this Agreement. These funds shall be deposited in an account separate from all other GRANTEE funds and shall not be commingled with any other account of GRANTEE. Together with any and all interest earned subsequent to these deposits and/or investment income and/or any other source of revenue from these funds, the funds, for the purposes of this Agreement, shall be known as the “GRANT.” The GRANT shall be used by GRANTEE only for the funding and partial funding of GRANTEE’s operating expenses, including salaries.

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

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

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

ARTICLE III. CONSIDERATION AND SCOPE OF SERVICES

3.1 GRANTEE agrees to provide the services described in Exhibit A, entitled “Scope of Services,” to this Agreement, attached hereto and made a part of this Agreement, in exchange for the compensation described in Article II.

3.2 All work performed by GRANTEE hereunder shall be performed to the satisfaction of CITY. The determination made by CITY shall be final, binding and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by GRANTEE, which

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

3.3 4.3 Within thirty (30) days of adoption by City Council of this agreement, City and GRANTEE shall finalize Exhibit A outlining the milestones to be achieved and procedures to be utilized to deliver the Services during the Term of this agreement. The City and GRANTEE shall work jointly to finalize the Exhibit A and after approval by each respective Director, Exhibit A shall become incorporated into this Agreement.

ARTICLE IV. COMPLIANCE

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

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

charge as a claim against future payments. The CITY's ECONOMIC DEVELOPMENT DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.

- F. The submission of falsified information or the failure to timely submit all information by GRANTEE as requested by CITY is grounds for termination of this Agreement.
- G. GRANTEE agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute toward, coordinate with, or facilitate the performance of this Agreement.
- H. GRANTEE shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, and obstruction of investigation or other criminal action and to prevent frauds and abuse of funds.

4.02. GRANTEE agrees to establish internal procedures that ensure employees funded or partially-funded by this Agreement have an established complaint and grievance policy.

- A. Such grievance policy shall include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
- B. In the event no complaint and grievance policy has been established, GRANTEE shall follow the procedures outlined in the City of San Antonio Municipal Civil Service rules for employees funded or partially-funded by this Agreement.

4.03 GRANTEE agrees to comply with, and require compliance by any and all contractors and professional consultants performing work in connection with any procurement of product, infrastructure or service that will be paid for out of the GRANT, all federal, state and local laws, rules and regulations including, but not limited to, the Fair Labor Standards Act, the Equal Pay Act and the Equal Employment Opportunity Act, all as amended and as applicable.

4.04 GRANTEE understands and agrees that GRANTEE is required to refund money, pursuant to 80(R) HB 1196, that GRANTEE has received from CITY through this Agreement, in the event of GRANTEE's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

4.05 As a condition of entering into this Agreement, GRANTEE represents and warrants that it has complied with, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of CITY's SBEDA Ordinance No. 2010-06-17-0531. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers or

commercial customers, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. GRANTEE shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to CITY contracts.

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

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

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

ARTICLE V. RECORDS, REPORTS AND AUDIT RIGHTS

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

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

5.03 GRANTEE shall submit to CITY's EDD Director and CITY Auditor, on an **annual** basis, a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards for governmental entities within one

hundred and twenty (120) days of GRANTEE'S fiscal year end. The audited financial statement shall include a detailed schedule of receipts and expenditures of GRANT funds by budgeted cost category. It is imperative any auditor performing an audit of GRANTEE read the entire Agreement, including all attachments, if any, between the CITY and GRANTEE, since the budget and financial compliance of the Agreement is only a portion of the total contractual obligation. GRANTEE shall submit the audited financial statements and any management letter prepared by the independent CPA to both the Department of Economic Development, P.O. Box 839966, San Antonio, Texas 78238-3966, and to the Office of the City Auditor, 111 Soledad, Suite 600, San Antonio, Texas, 78205.

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

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

ARTICLE VI. INSURANCE

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

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

- (b) Non-Owned Automobiles
- (c) Hired Automobiles

- | | |
|---------------------|--------------------|
| 3. Builders Risk* | Amount of Contract |
| 4. Commercial Crime | Amount of Contract |

*Where Applicable

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

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

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

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

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

ARTICLE VII. CONSTRUCTION PROVISIONS

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

7.01 If infrastructure changes or other construction is to be undertaken with GRANT money, then GRANTEE, or its contractors and subcontractors shall provide payment, performance and subdivision bonds, or such other similar cash equivalent or letter of credit,

provided same is approved by the City Attorney and the Chief Financial Officer, that names CITY as Obligee and shall submit proof of same to CITY, before any GRANT-funded infrastructure work commences.

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

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

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

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

ARTICLE VIII. INDEMNIFICATION

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

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

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

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

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

ARTICLE IX. PUBLIC ACKNOWLEDGEMENT AND POLITICAL ACTIVITIES

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

9.02 No funds provided from or through CITY shall be contributed to or used for, in whole or in part, the conduct of political activities or the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of

any CITY-funded grant or activity be assigned to work for or on behalf of any partisan or non-partisan political activity or candidate. This Section 9.02, including (A)(1 through 4) and (B)(1 through 3), shall be included in any contract or subcontract of GRANTEE:

A. The following is prohibited:

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

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

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

ARTICLE X. CONFLICT OF INTEREST

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

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

ARTICLE XI. NEPOTISM

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

ARTICLE XII. DEFAULT

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

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

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

ARTICLE XIII. ASSIGNMENT

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

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

ARTICLE XIV. GOVERNING LAW AND VENUE

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

ARTICLE XV. LEGAL CONSTRUCTION

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

ARTICLE XVI. WAIVER

16.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

16.02 Notwithstanding the above, GRANTEE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.

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

ARTICLE XVII. RELATIONSHIP OF PARTIES

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

ARTICLE XVIII. TERMINATION

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

ARTICLE XIX. NOTICES

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

If to the GRANTEE: Ann Stevens
 President
 BioMed SA
 P.O. Box 5368,
 San Antonio, Texas 78201

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

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

ARTICLE XX. ENTIRE AGREEMENT

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

ARTICLE XXI. AMENDMENTS

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

ARTICLE XXII. EXECUTION AUTHORITY

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

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL
FORCE AND EFFECT OF AN ORIGINAL, THIS THE _____ DAY OF
_____, 2016.

CITY OF SAN ANTONIO

BIOMED SA

Carlos Contreras
Assistant City Manager

Ann Stevens
President

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A: BIOMED Scope of Services

- 1) GRANTEE shall accomplish the following in accordance with the terms and conditions of the Agreement:
 - a) GRANTEE shall provide CITY's EDD Director with proper documentation verifying receipt of funding commitments from sources other than CITY and semi-annual budget reports outlining cumulative contributions and expenditures (to include all sources of funding).
 - b) GRANTEE shall provide quarterly reports on items 2a.) through 2 e.) on its activities to the CITY's EDD Director and, upon request, to the City Council of CITY, its boards, committees and/or commissions.
- 2) GRANTEE shall serve as an 'Industry Liaison' or 'sector expert' resource and collaborate with the City, San Antonio Economic Development Foundation (SAEDF) and other community economic development towards integration of private sector validated Biosciences Industry strategies and tactics towards accomplishment of the Goals and Objectives for publication in the annual Forefront San Antonio plan during the Term of this Agreement:
 - a) **Recruitment:** In the Forefront SA focus area of Recruitment GRANTEE shall develop, lead and report tactics that will support the recruitment of Healthcare/Biomedical jobs, investments and assets through 2020 through activities to include:
 - i) **Marketing:** GRANTEE shall submit advertising and the 2016-2017 marketing plan to promote San Antonio's biomedical industry and narratives on national media mentions.
 - (1) GRANTEE shall include recognition of the CITY's contribution to GRANTEE in all of GRANTEE's promotional materials, products and publications.
 - (2) GRANTEE shall provide CITY's EDD Director with all marketing materials and literature showing evidence that the CITY's contribution to GRANTEE is recognized in compliance with the provisions of this Agreement.
 - ii) **Prospect Development:** GRANTEE shall assist Forefront SA Partners to secure biomedical and healthcare industry prospects (as defined by the SAEDF), jobs, and investment to locate operations in San Antonio as described in Table 1: Economic Development Metrics.
 - b) **Retention and Expansion:** In the Forefront SA focus area of Retention and Expansion GRANTEE shall develop, lead and report tactics that will support the expansion of Healthcare/Biomedical jobs, investments and assets through 2020 through activities to include:
 - i) **BRE Visits:** GRANTEE shall use its relationships with local biomedical firms to organize company visits and interactions for the Forefront SA Partners business retention and expansion team.

- (1) **Export Programs:** GRANTEE shall collaborate with the Free Trade Alliance to connect to five (5) local biomedical companies that may be candidates to export to foreign markets.
- c) **Entrepreneurial Development:** In the Forefront SA focus area of Entrepreneurial Development GRANTEE shall develop, lead and report tactics that will support commercialization of intellectual property generating jobs, investments and the development of ecosystem support assets through 2020.
- d) **Workforce Development:** In the Forefront SA area of Workforce Development GRANTEE shall support SA Works at the request of the CITY in carrying out its charge.
- e) **Collaboration:** In the Forefront SA area of Collaboration, GRANTEE shall, develop a Bioscience Industry Study in order to define, align, and prioritize Strategic Objectives that will support the development of Biomedical jobs, investments and assets through 2020 by developing and securing:
- i) **Study Scope:** GRANTEE shall develop a scope for a Bioscience Industry Study to develop an assessment of competencies and strategic advantages, San Antonio as a business location, competing location analysis and best practices and recommended strategies in meeting the goals of Forefront SA.
- ii) **Solicitation:** GRANTEE shall solicit for consultants to complete the study and shall administer and organize Forefront Partners and private sector representatives to evaluate and select a project consultant.
- iii) **Private Match:** GRANTEE shall raise matching dollars to the CITY contribution towards the completion of the study.

Table 1. Economic Development Metrics

BioMed SA Action Plan, FY 2017 Goals	
New Qualified Prospects	3
Recruitment/Expansion	2
New Jobs Created	15
BioMed Conference / Marketing Event	1
International Trade & Investment Missions	1
Healthcare/Biomedical Export Prospect	5

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

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

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

III. SCOPE OF SERVICES

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the “Build San Antonio Green™ City of San Antonio Scope of Work Funding Request for 2017”, dated May 12, 2016, attached hereto as Exhibit A. Goals, objectives and performance standards for the Project will be established by the CITY’S Office of Sustainability and CONSULTANT agrees to comply with said goals, objectives and performance standards. The CONSULTANT understands and agrees that Exhibit A is fully incorporated herein verbatim for all purposes, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONSULTANT.

IV. TERMINATION

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

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

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

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

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

V. INDEPENDENT CONTRACTOR

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

VI. CONFIDENTIALITY

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

VII. OWNERSHIP OF DOCUMENTS

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

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

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

VIII. INTELLECTUAL PROPERTY

- 8.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the CITY.
- 8.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or

copyright, CONSULTANT will immediately:

8.2.1 Either:

- a) obtain, at CONSULTANT 's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- (c) reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

8.2.2 CONSULTANT further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this CONTRACT,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided:

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

IX. RECORDS RETENTION

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

X. RIGHT OF REVIEW AND AUDIT

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

XI. LICENSES AND CERTIFICATIONS

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

XII. CONFLICT OF INTEREST AND ETHICS

- 12.1 CONSULTANT acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with CITY or

any CITY agency such as CITY owned utilities. An officer or employee has a “prohibited financial interest” in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

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

XIII. INSURANCE

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

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

- 13.3 Prior to the commencement of any work under this Contract, CONSULTANT shall furnish a completed Certificate of Insurance to CITY's Office of Sustainability Director and City Clerk's Office. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which certificate shall furnish and contain all required information referenced or indicated thereon. **THE CERTIFICATE MUST IDENTIFY THE PROJECT CONTRACT BY NAME, "Build San Antonio Green™ City of San Antonio Scope of Work Funding Request for 2017"**. CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City's Office of Sustainability Director and no officer or employee shall have authority to waive this requirement.
- 13.4 CITY reserves the right to review the insurance requirements of this Contract during the effective period of this Contract and any extension or renewal hereof, if any, and to require modification of insurance coverage and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.
- 13.5 CONSULTANT's financial integrity is of interest to CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

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

Or excess liability coverage

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

3.6 MATERIAL REQUIREMENTS: CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, CONSULTANT shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. All of CONSULTANT's insurance requirements under this Contract are material obligations.

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

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

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

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

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

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

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

XIV. INDEMNITY

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

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

XV. AMENDMENT

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

XVI. NOTICE

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

CITY

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

CONSULTANT

Build San Antonio Green
Attn: Jason Pittman, Treasurer
118 Broadway, Suite 236
San Antonio, Texas 78205

XVII. LEGAL AUTHORITY

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

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

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

XIX. SUCCESSORS AND ASSIGNS

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

xx. NONWAIVER OF PERFORMANCE

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

xxi. COMPLIANCE

- 21.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 21.3 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Consultant certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing foregoing laws.

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

XXII. VENUE AND GOVERNING LAW

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

XXIII. SEVERABILITY

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

XXIV. GENDER

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

XXV. CAPTIONS

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

XXVI. ENTIRE AGREEMENT

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

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

EXECUTED this the _____ day of September, 2016.

CITY

City of San Antonio, Texas

CONSULTANT

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

Peter Zaroni,
Deputy City Manager
Office of the City Manager

Jason Pittman, Treasurer
Build San Antonio Green

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

By: Assistant City Attorney

EXHIBIT “A”

May 12, 2016

Build San Antonio Green[®]
City of San Antonio Scope of Work
Funding Request for 2017

Build San Antonio Green[®] (BSAG) is a non-profit organization founded by the City of San Antonio, CPS Energy, Bexar County, and Solar San Antonio. **BSAG** works with Partner organizations to develop and implement energy and emissions reduction policies for air quality improvement, water conservation, energy efficiency, and renewable energy, chiefly through the development and administration of the green building program and through the Bring Solar Home Program. BSAG provides technical workshops on energy efficiency, conservation, renewable energy and green building, while promoting the Build San Antonio Green[®] and Bring Solar Home programs and certifying Green-Built Homes in San Antonio.

As of July 2015 we are excited to have officially merged with our sister organization, Solar San Antonio. The success and mission of Solar San Antonio will now be carried on through the work of Build San Antonio Green. Our organizations shared a very similar mission to promote the wise and efficient use of resources and renewable energy.

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

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

BSAG has certified **5215 green projects** under our program to date, including **5143 single family new construction homes, 65 single family retrofit projects, and 7 multifamily projects**. This has resulted in the **prevention of more than 63 Million pounds of CO₂ to date**, the equivalent of taking 4625 cars off of the road for one year. In addition, the certified homes **have resulted in more than 9.3 megawatts of peak demand reduction**.

BSAG 2017 Request for Funding

For the 2017 budget year, BSAG is requesting \$ 85,000.00 from COSA as income to support organizational operations and activities alongside the other BSAG Funding Partners.

In the Council Consideration Request dated June 29, 2006 regarding COSA's Energy Conservation Plan, Goal 7 states that future funding to MPE be \$ 50,000.00 per year or as recommended by COSA Staff. In 2016, BSAG merged with our sister organization, Solar San Antonio, and consolidated funding with Bexar County in the amount of \$ 85,000.00, and also CPS Energy in the amount of \$ 90,000.00. The City of San Antonio similarly committed \$85,000.00 for 2016. In addition to organizational support, we also plan to bring in \$100,000.00 through our programs, Certification and Bring Solar Home fees and membership, and \$100,000.00 from fundraising events such as the Green Home Tour, SPARC party, and Solar Fest.

BSAG requests funding from the City of San Antonio to include in the BSAG 2017 Budget to support organizational operations and activities that support the following:

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

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

Projects are certified green under the BSAG program through a quality review process, and include options for both new construction and retrofit of single family homes and multifamily buildings for above code performance. The BSAG New Construction program aligns with the CPS Energy Whole Home Rebate as an automatic compliance method, allowing Builders and Developers to build above code. The *Green Retrofit* program was launched in 2008, and is a comprehensive home renovation certification option with a focus on making home more efficient and healthier. Projects certified under this program must complete a list of Core Guidelines that include both prescriptive and performance requirements. The *Energy Retrofit* certification was developed in 2010 to offer additional options for homes that do not need extensive retrofit work in all five program areas but will still benefit from significant energy improvements. The program has seen very rapid growth and is likely to continue serving as an important certification option as demand for retrofit projects increases. By expanding the applications of BSAG program components, BSAG will work more closely with the Housing and Neighborhood Services Department on such programs as the Owner-Rehab. The *Green* and *Energy Retrofit* programs provide easy-to-follow formats for retrofitting existing homes. Similar to Level 1 and Level 2 of the *Green Retrofit*, the *Energy Retrofit* is in a checklist format. Builders submit plans for review by the Build San Antonio Green staff and site visits are performed for all homes certified.

Builders entering the BSAG program receive ongoing training in green building techniques, and are required to attend Continuing Education Classes (CECs). BSAG's programs consist of

detailed green building checklists. Member builders submit building plans and the BSAG checklist to the BSAG office, where they are reviewed for certification by BSAG Staff. Each green home built under approved specifications will earn a certificate showing the certification level and be provided with a Homeowners Manual containing operational information about the home.

BSAG requirements are based on traditional stick frame construction and prescribes strategies to reduce electrical and water consumption, utilize resources and materials in a more efficient manner, minimize impact on the site, and improve indoor air quality. It is geared toward volume builders and affordable developers, and has certified over 5000 projects to date.

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

Tasks:

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

Performance Metrics: Performance will be measured by number of homes certified and Emissions and Energy savings calculations for demand reduction.

Population Served: 500 Families who are homebuyers, owners, or renters and the General Population through emissions reduction and energy conservation.

Deliverable(s):

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

2.) Develop and host Member Mixers for Networking and Recruitment

Build San Antonio Green will host two member mixers at certified homes in order to foster relationships between the various industry professionals and showcase how each of their businesses comes together to create the entire certified home. Over the years these mixers have allowed us to make connections between builders, developers, and vendors which have resulted in future projects that have additional green or energy saving features and utilize new building and solar technologies. Additionally, these mixers serve as an opportunity for us to recruit new members into our programs.

Staff will work in conjunction with member builders, affordable housing providers, and other local entities in the development and execution of these events. Specific affordable and market-rate houses will be targeted for “Green Open House” events throughout the year. These events will serve to both showcase specific green certified projects and also bring different entities in the housing sector together in a collaborative effort to support the local green building industry

Tasks:

- Meetings with partners and other agencies to coordinate Member Mixer events
- Coordination with builders to find eligible homes
- Marketing and outreach to promote events
- Hosting Member Mixer events in collaboration with local partners

Performance Metrics: Performance will be measured by number attendees and members

Population Served: Average attendance is 50 which we hope to double in 2017.

Deliverable(s):

- At least two (2) Member Mixer events throughout the year

3.) Community Education:

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

best option for builders wishing to build green in San Antonio, and workshop topics will be tied into the program and its requirements.

The SA Next lecture series is an opportunity to showcase New Urbanism as it relates to the revitalization of Downtown, SA Tomorrow and the SA 2020 initiatives. It takes a look at what is coming next for our city from the leaders and innovators who are making the changes a reality. Past Topics have included Transportation: Lone Star Rail District and Uber, Water Conservation Efforts with SAWS and SARA, Urban Farming Trends, and more.

Workshops:

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

SA Next:

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

Performance Metrics: Performance will be measured by number of attendees.

Population Served: Average Attendance for Workshops is 10-25 Industry Professionals. Average attendance at SA Next Lecture Series is 80 people and it is open to the public.

Deliverable(s):

- Two (2) Green Building topics workshops
- Four (4) installments of SA Next Lecture Series

4.) Outreach Events:

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

Population Served: Both events are open to the general public/community at large however as we do not plan or administer these events we do not have an attendance count.

Outreach Events:

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

5.) Plan and Administer the COSA 2017 SA Tomorrow Sustainability Awards

Build San Antonio Green works with our Partners to plan and administer the 2017 COSA Green Building Awards. The COSA Green Building Awards are an important service offered by the City of San Antonio to recognize noteworthy projects and innovations in the fields of green building and solar technology.

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

Tasks:

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

Performance Metrics: Performance will be measured by number attendees and participating entries.

Population Served: As we intend to combine this event with the annual Sustainability Forum we will be able to serve a larger population. The first Sustainability Forum had an attendance of 400 people who had interests in the future sustainability initiatives for the City.

Deliverable(s):

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

6.) Solar Fest

Organize and hold annual Solar Fest. It is a free, fun, family event that acts as a one-stop information center for everything related to “going solar,” energy efficiency, renewable energy, sustainability, CPS Energy rebates, federal tax credits, green job training, and green home building. In order to capture the widest possible audience for the informational aspects of this festival we will include live music and entertainment making it attractive to a wide demographic. In 2015 we doubled the size of Solar Fest to 8,000 people. We expect that it will be even bigger in the future!

Tasks:

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

Performance Metrics: Performance will be measured by number vendors who participate and the number of attendees. We hope to increase both of these numbers in 2017.

Population Served: Solar Fest serves the community at large. In 2015 we had 8,000 attendees and 80 vendors participate. Because attendees do not purchase tickets we do not have demographic data at this time.

Deliverable(s):

- Solar Fest Event

7.) Green Home Tour

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

Tasks:

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

Performance Metrics: Performance will be measured by number of attendees. Previous numbers were 300, which we hope to double.

Population Served: Potential Home Owners and Buyers who are interested in learning how to retrofit their homes or what to look for when in the market for an energy and water efficient home.

Deliverable(s):

- Green Home Tour Event

8.) Bring Solar Home

Bring Solar Home has been a program created with the sole purpose of connecting customers with solar installers. People interested in getting solar panels for either residential or commercial installations could visit the website <http://bringsolarhome.com/> and fill out an online form. Once they have submitted that form, we forwarded their information to 3 solar installing companies that might best fit their needs based on the information they provided on the form. The solar installers will then proceed to contact the customer in return and that is when the solar installer will do a site visit and come up with a proposal for the customer based on the home's energy needs. Our program is geared for those who want to go solar but don't know exactly where to start. In a way, we do the searching for them.

We have re-vamped the program to provide more options for those that are interested in solar energy. The concept for our main Bring Solar Home program for private ownership will remain the same, but we have added two additional programs that include CPS's Roofless Solar Program and the Rooftop Hosting Program to make sure that our program is helping going solar more accessible to a broader audience. Our new and re-designed website is a one-stop information center where customers interested in going solar can not only sign up for whatever program that best fits their needs, but they can also find information about CPS's incentives and rebates, some frequently asked questions, as well as contact information of the solar installers that are part of our program.

We work with CPS Energy, local solar installers, and financial institutions to simplify the process of "going solar." We hope to increase the number of solar installations in San Antonio by bridging the gap between consumers and industry professionals and by educating the public about solar.

Tasks:

- Provide a resource for the public to find out information relating to CPS Energy options, rebates, and incentives.
- Connect homeowners to resources for Solar Energy
- assess if their home qualifies for Solar Options
- Market the Bring Solar Home Program

Performance Metrics: Performance will be measured by number of applications received for 3 free quotes, the number of contracts signed, cost per watt, and size and location of systems. (For the other two simply solar options, we are helping to promote them but we are not part of the tracking and progress for success so collection of data and success of these programs is outside of our ability to control or track accurately.)

Population Served: We will be focused on helping 200 or more families to purchase solar through our Private Ownership path.

Deliverables:

- Administration of Bring Solar Home Program & Website

- Dispatch Installers for 3 Free Quotes to 200 Families

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

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

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

BSAG Deliverables Breakout for COSA Operations Contract 2015-2017	
Task 1: Certifications through BSAG®	Budgeted
Deliverables	
1. Projects certified through BSAG® (500)	\$43,000.00
	\$43,000.00
Task 2: Develop & Host Green Open House Events f/BSAG Cert Homes	
Deliverables	
2. Hold "Green Open House" Events (2)	\$4,000.00
	\$4,000.00
Task 3: Community Education	
Deliverables	
1. Builder Green Building Topics Workshops (2)	\$2,000.00
2. SA Next Lecture series (4)	\$4,000.00
	\$6,000.00
Task 4: Outreach Events	
Deliverables	
1. City of San Antonio Historic Homeowners Fair - August	\$500.00
2. COSA's Earth Day Celebration - April	\$500.00
	\$1000.00
Task 5: Plan & Administer Annual Green Building Awards	
Deliverables	
1. Selection of Nomination Committee	\$200.00

2. Update & Refine Award Criteria/Assist in Judge Selection	\$400.00
3. Coordinate & Manage Event Planning/Ceremony Operations	\$4,000.00
4. Awards & Event Promotion	\$400.00
	\$5,000.00
Task 6: Solar Fest	
Deliverables	
1. Execution of the Event	\$15,000.00
	\$15,000.00
Task 7: Green Home Tour	
Deliverables	
1. Execution of the Event	\$5,000.00
	\$5,000.00
Task 8: Bring Solar Home	
Deliverables	\$10,000.00
1. Administration of Bring Solar Home Program and Website	\$10,000.00
	\$85,000.00

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

This Agreement is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager or designee pursuant to Ordinance No. 2016-09-10-_____ dated September 15, 2016, and the Free Trade Alliance San Antonio (hereinafter "FREE TRADE ALLIANCE"); collectively, the "Parties".

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

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

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

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

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

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

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

I. PURPOSE STATEMENT

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

II. TERM

2.1 Except as otherwise provided pursuant to the provisions hereof, this Agreement shall begin on October 1, 2016 and end on September 30, 2017.

III. PERFORMANCE

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

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

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

IV. SCOPE OF WORK

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

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

4.3 Within thirty (30) days of adoption by City Council of this agreement, City and FREE TRADE ALLIANCE shall finalize Exhibit A outlining the milestones to be achieved and procedures to be utilized to deliver the Services during the Term of this agreement. The City and FREE TRADE ALLIANCE shall work jointly to finalize the Exhibit A and after approval by each respective Director, Exhibit A shall become incorporated into this Agreement.

V. PERFORMANCE RECORDS AND REPORTS

5.1 FREE TRADE ALLIANCE shall provide quarterly reports that provide detailed results of the Article IV. SCOPE OF WORK accomplishments for FY 2017 to the Department, due 30 days after the end of the quarter.

5.2 FREE TRADE ALLIANCE shall maintain accurate, current and complete governmental accounting records and supporting documentation for all expenditures of funds provided through this Agreement. FREE TRADE ALLIANCE shall retain such records, and any supporting documentation, for a minimum of five (5) years from the end of the Agreement period, or the period required by other applicable laws and regulations.

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

to this Agreement and/or not supported by the proper documentation. FREE TRADE ALLIANCE will pay the cost of this examination if the variance of expenditures exceeds 3% of the funds disbursed by the CITY.

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

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

VI. PERSONNEL

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

VII. COORDINATION WITH CITY

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

VIII. FEES, EXPENSES AND BILLING

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

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

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

IX. LEGAL/LITIGATION EXPENSES

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

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

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

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

X. TERMINATION

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

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

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

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

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

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

XI. INDEPENDENT CONTRACTORS

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

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

XII. CONFLICT OF INTEREST

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

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

XIII. INSURANCE REQUIREMENTS

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

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

13.3 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and its limits when deemed necessary and prudent by the CITY’s Risk Manager based upon changes in statutory law, court decisions or circumstances surrounding this Agreement, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.

13.4 FREE TRADE ALLIANCE's financial integrity is of interest to CITY; therefore, subject to FREE TRADE ALLIANCE's right to maintain reasonable deductibles in such amounts as are approved by CITY, FREE TRADE ALLIANCE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at FREE TRADE ALLIANCE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

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

13.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Upon such request by CITY, FREE TRADE ALLIANCE shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

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

- Add an endorsement which names CITY and its officers, employees and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;

- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

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

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

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

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

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

XIV. INDEMNITY

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

TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. FREE TRADE ALLIANCE SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR FREE TRADE ALLIANCE KNOWN TO FREE TRADE ALLIANCE RELATED TO OR ARISING OUT OF FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT FREE TRADE ALLIANCE'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING FREE TRADE ALLIANCE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

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

XV. SEVERABILITY

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

XVI. CHANGES AND AMENDMENTS

16.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment, in writing, executed by both CITY and FREE TRADE ALLIANCE and approved by CITY Council, as evidenced by a duly-authorized ordinance.

XVII. ASSIGNMENT

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

XVIII. ENTIRE AGREEMENT

18.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless the same be in writing, dated subsequent to the date hereof, and executed by said Parties.

XIX. NOTICE

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

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

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

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

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

XX. NO PERSONAL LIABILITY

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

XXI. GOVERNING LAW

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. SIGNATURES

24.1 FREE TRADE ALLIANCE and CITY for themselves, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained. This Agreement has been executed in triplicate originals this _____ day of _____, 2016.

AGREED TO BE EFFECTIVE October 1, 2016.

EXECUTED and **AGREED** to this the _____ day of _____, 2016 (the "Effective Date").

CITY OF SAN ANTONIO

FREE TRADE ALLIANCE

Carlos Contreras
Assistant City Manager

Name:
Title:

ATTEST:

Leticia Vacek
City Clerk

Approved as to Form:

City Attorney

EXHIBIT A: FREE TRADE ALLIANCE SCOPE OF SERVICES

1. FREE TRADE ALLIANCE shall promote and support companies in the export of products and services by San Antonio companies as the coordinating organization of all export-related programs and services towards implementation of the 2015 San Antonio Trade and Investment Strategy and in congruence with the Forefront SA as administered and implemented by the San Antonio Economic Development Foundation (SAEDF) under contract with the City of San Antonio. Goals, deliverables, and metrics for FY2017 include:

- a. **Export Marketing and Promotion:** FTA is charged to building awareness of community incentives, services, and programs available for companies seeking to export to foreign markets, therefore:
 - i. FTA shall generate a methodology to identify targeted industry prospects that are high-potential targets to begin or increase exports by December 1, 2016.
 - ii. FTA shall contact and promote export services to no less than 20 Forefront SA Targeted Industry companies and report to the City of San Antonio the list of 20 by no later than January 1, 2017 and the status of their contact with the company along a continuum of progress towards exporting as defined by the Free Trade Alliance each quarter thereafter.
 - iii. FTA shall, in conjunction with the UTSA Institute for Economic Development (IED), submit for approval and subsequently publish an annual State of Export in San Antonio communicating to the public, business community and elected officials therefore:
 1. The importance of export as it pertains to Forefront SA and SA Tomorrow Goals.
 2. The latest metrics measuring progress in exporting goods and services from San Antonio.
 3. Highlighting current and potential markets for export for each of the Target Industries and for Core Industries that demonstrate significant export value.
 4. Testimonials of companies that have begun exporting through FTA, UTSA or other resources.
 5. Highlighting a list of community resource organizations and the types of assistance they provide towards success export.
- b. **Export Market Assistance:** FTA is charged with assisting companies to secure and develop foreign market opportunities and maximize local incentives associated with export therefore:

- i. FTA shall collaborate with CITY to organize four (4) Grupo San Antonio breakfasts in Mexico City to promote Targeted Industry product and service export in collaboration with the CITY.
 - ii. FTA shall at the request of the CITY support in the development and implementation of activities based on the MOU signed with Mexico City in conjunction with community partners.
 - iii. FTA shall lead or support the community's efforts to maximize the impact of the Foreign Trade Zone designation by:
 - 1. Generating a methodology by January 2017 to identify targeted industry prospects that are high-potential targets to that would be likely to benefit from the FTZ.
 - 2. Contact and promote FTZ to no less than 10 SA Tomorrow Targeted and Core Industry companies and report to the City of San Antonio the status along a continuum of progress towards exporting as defined by the Free Trade Alliance. (i.e. Yes, No, Not Right Now)
 - 3. Support the NAFTA Spring Seminar in May 2017 to be hosted in San Antonio.
- c. **Incoming and Outgoing Delegations:** FTA is charged with hosting inbound delegations and supporting outbound delegations in order to establish relationships to develop future export opportunities, therefore:
 - i. FTA shall, as requested by CITY, provide tailored presentations to foreign delegations and provide such presentations to the Chief of Protocol and designated Economic Development Manager for approval no less than two business days before the scheduled engagement.
 - ii. FTA shall, as requested by CITY, take the lead in organizing and hosting incoming and supporting outgoing foreign trade missions organized by government, business organizations or sector-specific industry groups based on the delegation composition.
 - iii. FTA shall, as requested by CITY, support business referrals or requests received by the Economic Development Department.
- d. **Advocacy and Data:** FTA is charged as the authority on advocacy and research support on foreign trade policies critical to trade, investment and logistics issues of importance to CITY, therefore.
 - i. FTA shall monitor and advocate on all local, state and federal trade related issues relevant to the region that would benefit CITY during "SA-to-DC" or other events in cooperation with CITY's Public and Government Relations Department.
 - ii. FTA shall address all CITY requests for data regarding regional performance of exports and/or FDI (in conjunction with SAEDF).

- e. **Collaboration and Continuous Improvement:** FTA as a contractor for economic development service delivery in the area of exports is charged with consistent collaboration to refine and formulate effective strategies and, at a minimum, provide the following support to the CITY:
- i. FTA shall participate in the Forefront SA strategic plan meetings convened by the SAEDF at the request of the City of San Antonio.
 - ii. FTA shall provide performance records and reports, as presented to the Executive Committee meetings on a quarterly basis.
 - iii. FTA shall submit a digital record, either in Microsoft Excel or through direct input into CITY's Economic Development Management System (Salesforce.com) of all companies provided technical assistance through FTA to include detailed information on:
 - 1. Company: Name, Industry, Originating Country, Address, Email, Phone, website, brief description
 - 2. Contact (minimum of one): Full Name, Title, Email, Phone
 - 3. Contact Description: a description of assistance that was provided and outcome of the interaction.

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

FUNDING AGREEMENT

SAN ANTONIO ZOOLOGICAL SOCIETY

This Agreement (the "Agreement") is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated September ____, 2016, and the San Antonio Zoological Society, (hereinafter referred to as "Zoo").

RECITALS

WHEREAS, the Zoo has leased property within Brackenridge Park since 1959, and has operated and maintained the San Antonio Zoo as a major attraction and educational facility for the benefit of citizens and tourists since that time; and

WHEREAS, pursuant to Ordinance No. 2008-08-07-0644, the City and Zoo entered into a Lease Agreement for the facility at Brackenridge Park through May 9, 2033; and

WHEREAS, the Department of Parks and Recreation is designated as the managing City Department for this Funding Agreement on behalf of the City; and

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

NOW THEREFORE FOR VALUABLE CONSIDERATION, the parties agree as follows:

1. The Zoo will operate and open to the public a zoo of a like quality and similar operating hours as it has historically done, and carry out all activities and services in a manner satisfactory to the Association of Zoos and Aquariums and in compliance with the budget submitted and attached as Exhibit A.
2. In consideration, the City will pay Zoo, as requested by Zoo from time to time for those certain expenditures set out in Exhibit A attached hereto an amount, which, in aggregate will not exceed the amount of \$306,597.00 (the "Funds").
3. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2016 and shall terminate on September 30, 2017.
 - (a) The Zoo understands that this Agreement will terminate as provided in this Section, and that there is no guarantee of renewal for the following fiscal year.
4. All Funds and accounts into which the Zoo may deposit the Funds will be subject to audit and review according to the City Operational Guidelines and City of San Antonio General Provisions. The City's Department of Parks and Recreation will have the authority to perform all such accounting functions or delegate all or part of the responsibility to the Zoo.
5. The Zoo shall be required to furnish the Parks and Recreation Department an audited financial statement for the budget line items funded by or through the City as set out in Exhibit A, prepared by an independent auditor (CPA) within one-hundred and twenty (120) days of the close of the Zoo's fiscal year or termination of this Agreement. In addition to the audited financial statements or program-specific audit(s), a copy of the management letter (Report on the Conduct of Audit) should be submitted.

The financial disclosure to be provided by the Zoo to the City under the terms of the Lease shall be deemed sufficient to meet this requirement, however, the financial statements must be

accompanied by a schedule of receipts and disbursements by budgeted cost category for each of the line items to be funded by or through the City as listed in Exhibit A.

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

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

voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

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

CITY

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

ZOO

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

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

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

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

19. Should the Zoo fail to fulfill obligations under this Agreement in a timely and proper manner, and (i) it shall not correct any such failure within sixty (60) days following the date the City provides the Zoo of written notice of such violation, or (ii) if such default cannot be reasonably cured within sixty (60) days of such notice, if the Zoo has failed to begin to cure such matter within the sixty (60) day period and diligently pursue such cure thereafter, the City shall thereupon have the right to terminate this Agreement by sending written notice to the Zoo of such termination and specify the effective date thereof. The Zoo shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.
20. All of the work performed under this Agreement by the Zoo shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.
21. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
22. Non-Discrimination: As a party to this Agreement, the Zoo understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
23. SBEDA: Compliance with Small, Minority and Woman-owned Business Enterprises Policy, Non-Discrimination and Equal Employment Opportunity Policy.
 - 23.01 The Zoo is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts. In all events, Zoo shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 2007-04-12-0396, and the amendments thereto in connection with the award of the construction contract(s). Said ordinances are incorporated herein for all purposes, as if fully set forth herein. Zoo further agrees that it will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Business Economic Development Advocacy (SBEDA) Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development, Division of Internal Review and the City Clerk's Office in connection with the Parking Facility.
 - 23.02 Zoo agrees to comply with and all SBEDA goals assigned to this Agreement as outlined in Exhibit B.
 - 23.03 Zoo agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its project are found or if Zoo does not meet the SMWBE goals as specified by the City's Department of Economic Development, whichever is less, as a result of a review or investigation conducted by City's Department of Economic Development, Zoo will be required to submit a written report to City's Department of Economic Development. Zoo will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies.
24. The signer of this Agreement for the City and the Zoo each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the City and the Zoo respectively, and to bind the City and the Zoo to all of the terms, conditions, provisions and obligations herein contained.

25. This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or agreements, either oral or written.

In witness of which this Agreement has been executed effective the _____ day of _____, 2016.

CITY OF SAN ANTONIO:

SAN ANTONIO ZOOLOGICAL SOCIETY:

Xavier D. Urrutia, Director
Parks and Recreation Department

Tim Morrow, CEO/Executive Director
San Antonio Zoological Society

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Exhibit A: Proposed Uses Fiscal Year 2017

Exhibit B: SBEDA Goals

Exhibit A

**San Antonio Zoo
City of San Antonio Grant
Proposed Uses Fiscal Year 2017**

Marketing & Public Affairs

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

Membership Expense

Direct Mail	61,597
Magazine Expense	10,000

Total **\$ 306,597**

Exhibit B

SBEDA GOALS

HOLD PENDING DETERMINATION BY GOAL SETTING COMMITTEE

DRAFT

FY 2017 ARTS & CULTURAL AGENCY FUNDING
Funding by Agency Category
FY 2017 Adopted Budget

Program/Agency Name	Adopted FY 2017
CULTURAL ARTS OPERATIONAL - LIVE PERFORMANCES	
Alamo City Opera Piccola	\$37,000
ARTS San Antonio	237,000
AtticRep	17,000
Ballet San Antonio	81,000
Cactus Pear Music Festival	64,000
Chamber Orchestra of San Antonio	21,000
Children's Chorus of San Antonio	109,000
Children's Fine Arts Series	28,000
Guadalupe Cultural Arts Center	339,000
Jump-Start Performance Company	51,500
San Antonio Chamber Choir	11,500
San Antonio Choral Society	13,500
San Antonio Dance Theatre (Metropolitan Ballet)	40,000
San Antonio International Piano Competition	13,000
SOLI Chamber Ensemble	17,000
Symphony Society of San Antonio	614,000
The Classic Theatre of San Antonio	30,000
The Magik Children's Theatre	247,000
The Opera San Antonio	125,000
The Playhouse San Antonio	151,500
Woodlawn Theatre	90,000
Youth Orchestras of San Antonio	182,000
Total Live Performances	\$2,519,000
CULTURAL ARTS OPERATIONAL - MUSEUMS	
Artpace, Inc.	\$269,500
Contemporary Art for San Antonio (Blue Star)	188,000
National Western Art Foundation (Briscoe Western Art Museum)	100,000
San Antonio Children's Museum (DoSeum)	200,000
San Antonio Museum of Arts	347,000
Southwest School of Arts	321,000
Witte Museum	567,000
Total Museums	\$1,992,500
CULTURAL ARTS OPERATIONAL - COMMUNITY GROUPS	
American Indians in Texas-Spanish Colonial Missions	\$51,500
Bihl Haus Arts	90,000
Centro Cultural Aztlan	110,000
Conjunto Heritage Taller	19,000
Dreams Fulfilled Through Music	14,000
Esperanza Peace and Justice Center	276,000
Gemini Series - Gemini Ink	114,000
Inspire Community Fine Art Center	41,000
Musical Bridges Around the World, Inc.	66,000
San Anto Cultural Arts, Inc.	103,000
SAY Sí	223,000
The Network of Young Artists	38,000
Urban-15 Group	118,000
Total Community Groups	\$1,263,500

FY 2017 ARTS & CULTURAL AGENCY FUNDING
Funding by Agency Category
FY 2017 Adopted Budget

Program/Agency Name	Adopted FY 2017
FESTIVALS	
Anuja San Antonio	\$8,500
Avenida Guadalupe, Dies y Seis de Septiembre Festival	2,000
SA Film - San Antonio Film Festival	3,000
San Antonio Parks Foundation	18,400
San Antonio Public Library Foundation	46,500
Sociedad Herencia Puertorriqueña	2,400
Texas International Folk Dancers	2,000
Total Festivals	\$82,800
ARTIST REGRANTING	
National Association of Latino Arts and Culture	\$30,000
San Antonio Artist Foundation	30,000
Total Artist Regranting	\$60,000
Additional Arts Funding Allocations	
Cultural Collaborative / Strategic Plan	\$75,000
Organizational Development & Mentoring Program	75,000
Sister City	100,000
Technical Assistance	10,000
Total Additional Arts Agency Funding Allocations	\$260,000
Total FY 2017 Arts & Cultural Agencies Allocations	\$6,177,800

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 Executive Director for Department of Arts and Culture pursuant to Ordinance No. _____ dated **September 15, 2016**, and the **(agency name)**, (hereinafter referred to as “Contractor”).

WITNESSETH:

WHEREAS, the Department of Arts and Culture is designated as the managing City department (hereinafter referred to as “DA&C”) 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, 2016** and shall terminate on **September 30, 2017**.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.
- 2.3 Contractor understands that City will not distribute funds under this Contract until Contractor has submitted all invoices and receivables required under the previous fiscal year's contract and City has approved said submittals. This does not excuse Contractor from complying with Section 8.6 requiring all documents and required deliverables be submitted within a period not to exceed thirty (30) days from the termination date of the Contract.

III. CONSIDERATION

- 3.1 In consideration, City will reimburse Contractor for expenses incurred in accordance with the budget(s) approved by City Council in Ordinance No. 2016-XX-XX-XXXX. Said budget(s) is (are) part of **Attachment I** to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount(s) as set forth in the table below:

Operational Support	\$	Attachment I
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- 3.2 The funding level of this Contract is based on the allocation awarded to DA&C by the City of San Antonio. The allocation is based on an appropriation for the **Operational Support** and DA&C'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.

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, subject to the provisions of Section 4.2 (B), 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.") 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 (s) ("Disbursement Schedule (s)"):

Monthly Disbursements											
Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sep

- (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 DA&C, funds not yet received under this Contract shall revert to a monthly reimbursement schedule, as determined by the Executive Director of DA&C, according to standard procedures followed by City's Finance Department.

- 4.3 The City Manager, Assistant City Manager or the Director of DA&C 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 DA&C 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 DA&C.
- 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 DA&C prior to

such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.

4.7 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).

4.8 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:

(A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article **VIII** of this Contract. If accrual basis reports are required, Contractor shall develop accrual data for its reports based on an analysis of the documentation available;

(B) adequate identification of the source and application of funds for City-sponsored activities and Allowable Costs under this Contract. Such records shall contain information pertaining to City funds, required City authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;

(C) effective control over and accountability for all funds, property, and other City-owned assets. Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

(D) comparison of actual expenditures 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] (Standard system for all delegate agencies) and

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.9 Contractor agrees to comply with the following check procedures:

- (A) No blank checks are to be signed in advance;
- (B) No checks are to be made payable to cash or 'bearer' with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 for any given calendar month during the term of this Contract unless Contractor receives prior written approval from DA&C to exceed such limit. Such requests for petty cash must be supported by the submission to DA&C of an original receipt; and
- (C) Checks issued by City to Contractor shall be deposited into the appropriate bank account no later than three (3) business days of Contractor's receipt of each such check, and shall never be cashed for purposes of receiving the face amount back. If such check(s) are not cashed within ninety (90) days from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. Upon cancellation of any outstanding check, if deemed appropriate by City, Contractor may be reissued such check but, if deemed by City not to be a valid expense, such check shall be immediately returned to City.

4.10 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency and Contractor warrants that each invoice submitted for payment does not include any costs

paid for by another funding source or submitted for reimbursement to any other funding source.

- 4.11 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds must be returned by Contractor to City within 10 days.
- 4.12 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of DA&C 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; or any other source of Contractor generated income resulting from fees charged or services rendered to other outside sources. 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.
- 5.2 Contractor shall provide DA&C, 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, number of attendees, cost of fees and other charges that generated 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 Upon written approval from City, Contractor shall be permitted to retain such program income to be added to the Project and used to further eligible Project and/or Contractor objectives.

- 5.5 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 Executive Director, as representative of City, and 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 DA&C 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 that resulted in findings of accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DA&C 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 copies of excerpts, transcripts, books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all other non-City executed 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, Contractor shall be notified by City 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, DA&C 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 DA&C elects to deduct such claims from subsequent reimbursements, during such time, Contractor is forbidden to reduce Project expenditures or agreed upon performance measures under this Contract. Contractor must also use its own non-City funds to maintain the Project and to comply with any and all agreed upon performance measures under this Contract.

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 DA&C is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by DA&C, Contractor shall furnish to DA&C, if applicable, such statements, records, data, and applicable information. Contractor shall 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 DA&C such reports as may be required by City, including the Contract Monitoring Report form, which is affixed hereto and incorporated herein as **Attachment II** by electronic means. Said report is to be

submitted to DA&C no later than 4:00 p.m. on the tenth (10th) day of each month unless otherwise] directed by City.

8.3 Contractor must provide monthly performance reports upon submission of Requests for Disbursement of funds.

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 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.

8.5 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.

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 DA&C, unless required to do so by a court of competent jurisdiction. Under said circumstances, the Director for DA&C shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

- 8.6 City and Contractor agree that should City wish to obtain a license to use the Project or any part of 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.
- 8.7 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.
- 8.8 Prior to execution of Contract document, Contractor shall provide to DA&C all information requested by DA&C 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 Contractor's Project records; and shall be submitted within 10 days after board approval.
 - (E) Board Agenda, if requested must be submitted at least three (3) business days prior to each Board meeting.
- 8.9 Contractor agrees to comply with official records 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 of Arts and Culture, 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 a 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 Arts and Culture. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement. [
- (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
- (C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
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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 of Arts and Culture
PO Box 839966
San Antonio, Texas 78283-3966
ATTENTION: Contract Manager

(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.
- 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 DA&C upon written request form 990, 990N 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 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. Under applicable Texas Unclaimed Property laws, Contractor shall remit any such unpaid funds to the State of Texas, Comptroller of Public Accounts; <https://mycpa.cpa.state.tx.us/up/Search.jsp> .
- 13.5 Contractor must be designated and remain in good standing with the State of Texas as a 501(c)(3) organization during the term of this Contract. If during the course of this agreement, the Contractor's 501(c)(3) status is no longer in effect, the City shall consider that change as grounds for suspension or termination of this Contract.

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;

(B) 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 DA&C. Contractor shall list the name and number of a contact person from DA&C on the statement that Contractor's personnel can call to report said violations.

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

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

XV. PERSONNEL MANAGEMENT

- 15.1 Contractor shall promptly inform (within 5 business days) City of any key employee status changes, whether or not such positions are funded under this Agreement. Said key employees are defined as Executive Director, Artistic Director, Program Manager, Administrator, CFO, and CEO.
- 15.2 Contractor shall provide City with its hours of operation no later than October 31, 2016. Contractor shall promptly inform the City if any change is made to its daily schedule.
- 15.3 Contractor shall have a salaried full-time or part-time manager (works at least 20 hours per week, compensated at least a federal minimum wage) who is responsible for the business management of the organization on staff at all times during the term of this Contract. Contractor shall supply such manager's job description at the time of contract negotiation
- 15.4 Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 15.5 Contractor is permitted to pay its full time employees for the total number of holidays authorized by City Council for City employees. If Contractor elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract. Contractor shall provide City with a list of all agency Board approved holidays upon execution of this Contract.
- 15.6 Contractor agrees to include job titles in their invoice(s), and additionally must provide to City, upon request, any salary or range increase/decrease, to include total dollar amount of said increase or decrease of salary, for City funded personnel positions.
- 15.7 Contractor agrees that all copies of written job descriptions for City funded personnel positions will be filed in all individual personnel folders for each position in the organization.
- 15.8 Upon request, the Contractor agrees to provide City with the names and license registration of any employees of Contractor regulated by State law whose

activities contribute towards, facilitate, or coordinate the performance of this Contract.

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

XVI. ADVERSARIAL PROCEEDINGS

- 16.1 Contractor agrees to comply with the following provisions:

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

XVII. CITY-SUPPORTED PROJECT

- 17.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is "supported by the City of San Antonio's Department of Arts & Culture" and by utilizing the official DA&C 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. Additionally, contractor's website shall include a hot link to www.getcreativesanantonio.com home page.
- 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 said venues must be accessible in accordance with the 1990 American Disabilities Act (ADA) compliance.
- 17.6 All City-supported events must take place within the City of San Antonio city limits.

- 17.7 Contractor shall submit an application to Tricentennial Commission to become a “Tricentennial Partner” as all events sponsored by City of San Antonio during the 2018 year shall be designated as “Tricentennial Events” and marketed through the Tricentennial Commission as well as agency and DA&C efforts.

Contractor also understands and agrees that in addition to their regularly scheduled programs/events, special provisions may also be incorporated into the current year’s performance plan to include activities affiliated with San Antonio Film and music projects, and special works identified for the City’s Tricentennial Celebration. This requirement may include, but not be limited to the display and incorporation of logos associated with each of the identified entities, and special recognition on marketing materials, websites, and other sources of media.

XVIII. SPECIAL PROVISIONS

- 18.1 Indecency. The following is City’s policy statement regarding material and/or performances funded under DA&C’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 DA&C 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 of artwork. Contractor acknowledges that the location of some or all of the artwork created through a Project on City property may necessitate future removal or relocation that may subject such artwork to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation, 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 the City's Public Art Policies and Procedures. Contractor agrees that a City decision made under this paragraph regarding if, when, and how, to remove such artwork is final.

Contractor hereby expressly consents to both the installation and removal of any and all artwork contained in the Project and thereby expressly waives his/her Moral Rights to such artwork. It is agreed that if such artwork is removed from its location causing it, or any part thereof, to be destroyed, distorted, mutilated or modified in any way, that artwork 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 DA&C 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) \$50,000.00, 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 DA&C;
 - (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 of Arts and Culture.
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 DA&C 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. 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:

Executive Director
Department of Arts and Culture

XXXXXXXXXXXXX
Address xxxx
San Antonio, TX 782xx

APPROVED AS TO FORM:

City Attorney

Authorized Signor

Print Name

Board President (if required by Agency)

ATTACHMENTS

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

**City of San Antonio
Metropolitan Health District
332 W. Commerce, Suite 108
San Antonio, TX 78205**

**YMCA of Greater San Antonio
231 E. Rhapsody Dr.
San Antonio, TX 78216**

Memorandum of Agreement

This Memorandum of Understanding (the Agreement) is entered into between the City of San Antonio (City), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (Metro Health) pursuant to Ordinance No. _____ passed and approved on _____, 2016, and the YMCA of Greater San Antonio (YMCA), which is a non-profit corporation (hereinafter collectively referred to as the Parties).

WHEREAS, two of the broad goals of the City are to increase physical activity and to positively change social norms regarding physical activity, with specific strategies including the development and implementation of four sustainable Siclovía Community Events; and

WHEREAS, the Siclovía Community Events are intended to engage families and the entire community in non-competitive physical activities and promote active and alternative transportation (walking, bicycling); and

WHEREAS, the City, through Metro Health, with the assistance of the YMCA has staged Siclovía Community Events and wishes to provide assistance in the continuation of these events in the future; and

WHEREAS, the City has determined that the Siclovía Community Events benefit the health and welfare of the community and are therefore a public purpose for which the City can provide funds to the YMCA for use at such events; and

NOW THEREFORE, the Parties agree that this Agreement outlines the responsibilities of each of the Parties:

I. PURPOSE

1.1 The Parties have determined that through their mutual collaboration the YMCA can continue the efforts developed and instituted by the City in launching four Siclovía Community Events that engage families and the entire community in non-competitive physical activities and promotes active and alternative transportation (walking, bicycling) and ultimately offers opportunities for greater physical activity and impacts normative beliefs regarding physical activity and exercise.

II. TERM

2.1 This agreement shall commence on November 1, 2016 and will terminate on October 31, 2017.

2.2 YMCA acknowledges that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources, but that all obligations of City are subject to funding from the general fund. Accordingly, if the City should fail to appropriate sums to pay any of City's obligations under the terms of this Agreement this Agreement shall terminate upon thirty (30) days written notice to YMCA and neither YMCA nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. Payment for services performed by YMCA through the effective date of termination shall be made pursuant to the terms herein.

III. JOINT ACKNOWLEDGMENTS

3.1 The parties agree and acknowledge that the major components of a Siclovía Community Event include:

- Logistics - to include: determining dates and routes, obtaining permits, and other matters as necessary;
- Community Outreach and Marketing - to include: identifying and solidifying sponsorships, merchandising and communication with stakeholders, and notifying neighborhood residents and businesses adjacent to the route;
- Development of Reclovía programs – to include: identifying physical activity exhibitors, performances and demonstrations, designed for all physical ability levels, along the street or surrounding open areas of Reclovía events (e.g. Zumba, Tai Chi, and yoga), planning, and identifying and organizing vendors;
- Financial planning and future sustainability.

3.2 The parties agree that Siclovía Community Events are considered YMCA events in collaboration with the City, YMCA partners and sponsors as determined by mutual agreement of the YMCA and the City.

3.3. City will have open access to any and all YMCA working groups related to the Siclovía Community Events.

IV. RESPONSIBILITIES OF THE CITY

4.1 The City will work with the YMCA as members on the Siclovía Steering Committee which will develop plans for future Siclovía Community Events to be staged within the term of this Agreement, which will include developing dates and routes, assisting with logistics (such as permits, safety plan, parking, equipment, etc.), and other Siclovía Community Event components, such as community outreach and marketing, Reclovía and vendors, volunteer training and coordination.

4.2 City will provide technical assistance and input, as possible, to the Siclovía Steering Committee via staff from Metro Health, the San Antonio Police Department, Public Works, Parks and Recreation, and Downtown Operations, and other relevant City departments, offices and staff.

4.3 City will promote Siclovía Community Events through existing City marketing resources including public access media, social marketing campaign, press releases, and City department media liaison consultation and services through the Siclovía Steering Committee.

4.4 City agrees to recognize Siclovía Community Events as official City events to include endorsement by the Mayor's Fitness Council as appropriate.

4.5 Upon authorization by the Director for Parks & Recreation Department fees for the use of City parks for future Siclovía Community Events may be waived in-lieu of services provided by the party and in consideration of the event being co-sponsored by the City. The parties agree and understand that the actual use of City park facilities will be dependent on availability.

4.6 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 four Siclovía Community Events. 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.

4.7 The total amount of the Agreement will be an amount not to exceed ONE HUNDRED AND SIXTY THOUSAND AND NO/100THS DOLLARS (\$160,000.00) to the YMCA for Siclovía Community Events held during the full term of this Agreement, as set out below:

The City will provide an amount not to exceed EIGHTY THOUSAND AND NO/100THS DOLLARS (\$80,000.00) per Siclovía Community Event for a total of two events during the term of this Agreement.

V. RESPONSIBILITIES OF THE YMCA

5.1 The YMCA will utilize its working experience on planning and implementing Siclovía Community Events to plan, implement and stage a total of two (2) future Siclovía Community Events during the term of this Agreement to be held: Sunday March 26, 2017, Sunday and October 22, 2017 to coincide with the ICMA Conference.

5.2 YMCA staff will continue to advise the YMCA Board and YMCA partners of Siclovía plans as they develop and seek the endorsement/ participation of YMCA partners in Siclovía Community Events.

5.3 The YMCA will promote Siclovía Community Events through existing YMCA marketing resources including club events, newsletters, media buys, and any other available resources.

5.4 The YMCA will evaluate potential sites for future Siclovía Community Events across San Antonio and select the event site, route and date for submission to the City.

5.5 The YMCA will identify existing and future YMCA programs to participate in Reclovía activities.

5.6 The YMCA will solicit and coordinate volunteers to assist in staffing Siclovía Community Events.

5.7 The YMCA will make staff available, as necessary, to support or take part in briefings and presentations to the San Antonio City Council.

5.8 The YMCA will identify and make recommendations for Steering Committee membership.

5.9 The YMCA will create a fully developed financial plan for funding and continuing Siclovía Community Events. Funding sources may include, but are not limited to, donations, partnerships, sponsors, vendor fees, and merchandise sales.

5.10 The YMCA will include the Metro Health logo on all promotional collateral materials printed after the start of this Agreement whether it be for free distribution or for sale. Examples include flyers, postcards, t-shirts, water bottles, banners, etc. The YMCA will provide a speaking role to a Metro Health official at all public speaking opportunities to promote Siclovía Community Events. The YMCA will also recognize Metro Health as the organization responsible for bringing Siclovía Community Events to San Antonio during all public speaking opportunities and in all printed promotional materials.

VI. REQUESTS FOR and RETENTION of RECORDS

6.1 YMCA 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 YMCA 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, YMCA shall retain the records until the resolution of such litigation or other such questions. YMCA 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 YMCA to return said documents to City prior to or at the conclusion of said retention.

6.3 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 YMCA receives inquiries regarding documents within its possession pursuant to this Agreement, YMCA 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, the YMCA shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of YMCA's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

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 either party 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 by the City.

7.4 Defaults With Opportunity for Cure. Should the YMCA 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. The YMCA shall have ten (10) calendar days after receipt of the written notice, in accordance with Article IX. Notice, to cure such default. If the YMCA fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another 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 YMCA'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, YMCA 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 YMCA, or provided to YMCA, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by YMCA in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at YMCA's sole cost and expense. Payment of compensation due or to become due to YMCA is conditioned upon delivery of all such documents, if requested.

7.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, YMCA 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 YMCA to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a **Waiver** by YMCA of any and all right or claims to collect moneys that YMCA 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, YMCA shall cease all operations of work being performed by YMCA 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 YMCA for any default hereunder or other action.

VIII. NOTICE

8.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:

Vincent R. Nathan, Ph.D., M.P.H.
 Interim Director
 San Antonio Metropolitan Health District

If to the YMCA:

Sandy Morander
 Chief Executive Officer
 YMCA of Greater San Antonio

111 Soledad St., Suite 1000
San Antonio, TX 78205

231 E. Rhapsody Dr.
San Antonio, TX 78216

IX. [RESERVED]

X. ADMINISTRATION OF AGREEMENT and RESTRICTIONS ON USE OF FUNDS

10.1 YMCA shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, YMCA shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, YMCA agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

10.2 YMCA shall make available to City, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to YMCA's facility and to YMCA's personnel for the purpose of interview and discussion related to such documents. YMCA shall, upon request, transfer certain records to the custody of City, when City determines that the records possess long-term retention value.

10.3 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information that is under the direct control of the YMCA requested by Metro Health shall be submitted by YMCA to City within five (5) working days of the request. All other reports, statements, records, data, policies and procedures or other information that the YMCA must request from its vendors or subcontractors requested by Metro Health shall be submitted by YMCA to City within ten (10) working days of the request. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. Furthermore, the YMCA ensures that all information contained in all required reports or information submitted to City is accurate.

10.4 Unless disclosure is authorized by the City, YMCA 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, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. YMCA 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, YMCA shall give the Director of Metro Health prior written notice that such disclosure is required with a full and complete description regarding such requirement. YMCA shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with YMCA's employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, YMCA shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

XI. INSURANCE

11.1 A) Prior to the commencement of any work under this Agreement, YMCA shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Metropolitan Health District, which shall be clearly labeled "*Siclovía Project*" 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 Health Department. 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) YMCA's financial integrity is of interest to the City; therefore, subject to YMCA's right to maintain reasonable deductibles in such amounts as are approved by the City, YMCA shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at YMCA'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	\$500,000/\$500,000/\$500,000

3. 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 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 <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

D) YMCA agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of YMCA herein, and provide a certificate of insurance and endorsement that names the YMCA 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). YMCA 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. YMCA shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Health Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the

City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, 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, YMCA shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend YMCA'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 YMCA'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 YMCA to stop work hereunder, and/or withhold any payment(s) which become due to YMCA hereunder until YMCA demonstrates compliance with the requirements hereof.

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

J) It is agreed that YMCA'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) YMCA and any Subcontractors are responsible for all damage to their own equipment and/or property.

XII. INDEMNIFICATION

12.1 YMCA 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 YMCA' activities under this Agreement, including any acts or omissions of YMCA, any agent, officer, director, representative, employee, consultant or subcontractor of YMCA, 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 YMCA 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. YMCA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or YMCA known to YMCA related to or arising out of YMCA' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at YMCA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving YMCA of any of its obligations under this paragraph.

12.2 Defense Counsel - YMCA shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If YMCA fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and YMCA shall reimburse City for all costs related to retaining defense counsel until such time as YMCA retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

12.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of YMCA, 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 YMCA or any subcontractor under worker's compensation or other employee benefit acts.

XIII. APPLICABLE LAW

13.1 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.

13.2 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.

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 YMCA. The Director for Metro Health may execute contract amendments on behalf of City in the following circumstances a) no cost extensions up to two years, b) budget adjustments authorized by the funding agency so long as the total dollar amount of the budget remains unchanged, c) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and d) changes in state or federal regulations mandated by the funding agency.

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. LEGAL AUTHORITY

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

XVII. ENTIRE AGREEMENT

17.1 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. This Agreement shall supersede any and all prior written and oral agreements between the City and YMCA.

CITY

YMCA OF GREATER SAN ANTONIO

Vincent R. Nathan
Interim Director
San Antonio Metropolitan Health District

Sandy Morander
Chief Executive Officer

Date

Date

APPROVED AS TO FORM:

City Attorney

DRAFT

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. _____, dated September 15, 2016, 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 \$54,885.00 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 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, 2016 and shall terminate on September 30, 2017.

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 \$54,885.00.

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

\$54,885.00 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 Contractor's 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 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 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.

This Contract has been executed effective as of the date of signature of the last party to sign (the "Effective Date").

CITY OF SAN ANTONIO:

CONTRACTOR:

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

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

Cory R. A. Hallam, Ph.D.
Chief Commercialization Officer
Office of Commercialization and Innovation

Date

Date

Assistant City Attorney

ATTACHMENTS

Attachment I – Scope of Work and 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 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 _____, 2016 (“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, pursuant to Ordinance No. 2015-09-10-0754, the City and CPS Energy entered into an Interagency Participation Agreement to implement a tree rebate program for energy savings; 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 (1,000) \$50 rebates to be funded from the Tree Mitigation and Tree Canopy Funds (“Funds”); and

WHEREAS, \$50,000 has been approved in the City’s FY 2017 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 City

- (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. **City/CPS Energy Joint Administration Committee.** City and CPS Energy shall form a Joint Administration Committee (the “Committee”) consisting of three members, including: (1) City 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, 2016 through September 30, 2017, 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.

[Signatures appear on the next page.]

City of San Antonio

By: _____
Xavier D. Urrutia, Director
Parks and Recreation Department

Date: _____

CPS Energy

By: _____
Kimberly R. Stoker, Director
Environmental & Sustainability

Date: _____

Attachment: FY2017 Program Budget Outline

FY2017 Green Shade Tree Rebate Program Budget Outline

Yearly Expense	Qty	Unit	Price	Total
City Rebates	1,000_	Ea	\$50.00	\$ 50,000.00
City Total				\$ 50,000.00
Administration and Materials				
City				\$ -
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 July 8 2016, sets forth the rights and obligations of the City of San Antonio (the "City") with respect to the 2016 Women in the World Texas Salon currently anticipated to be held on November 14, 2016 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 general 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 NEGLIGENT 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 November 14, 2016, 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

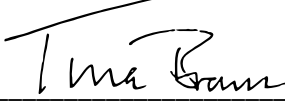
CITY OF SAN ANTONIO

Sheryl Sculley
City Manager

Approved as to Form:

City Attorney

WOMEN IN THE WORLD MEDIA, LLC



Tina Brown
Founder and CEO

EXHIBIT A
Women in the World Media, LLC
City of San Antonio Sponsorship
2016 Women in the World Texas Salon

SPONSORSHIP FEE AND OTHER CONSIDERATIONS

- The City shall pay to WWM a cash sponsorship fee up to US\$100,000.00 within 30 days of the effective date of the Ordinance approving this Agreement.
- 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):
 - Through sales efforts of contracted consultant, the City will seek to fundraise between \$75,000 and \$150,000 in additional funding to support Women in the World Texas. The City shall not be responsible for any shortfalls in such fundraising efforts. Marisa Fariña, VP Strategic Partnerships WITW, will support the contracted consultant in introducing partnership opportunities to local philanthropists, donors, corporations and organizations.
 - List development – research and development target list and outlets to reach out to potential attendees/invitees.
 - Leverage CVB marketing assets to promote event such as website presence, social media, newsletter, etc. WWM will create all material needed for the marketing efforts.
 - Press release posting and dissemination. WWM will write press release with inclusion of CVB partnership in the event.
 - Inclusion in City of San Antonio Communication 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 tickets for the event to extend as they see fit.
- WWM will assign a dedicated WWM staffer to interface with the City and the City will have the opportunity to offer ideas and suggestions concerning the Event schedule, programming, 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 have a formal role in the Event (timing and panel participants to be chosen by WWM producers). In the past, the City Manager and the Mayor have both had a role in the event (co-host and opening remarks).
- The City will be provided a reasonable opportunity to distribute no more than one item or piece of literature to guests attending the event (of which WWM currently anticipates there will be approximately 200), subject to WWM's reasonable requirements, if any.
- The City shall provide WWM with a 30-second branded PSA video to be played at some point leading into or following the programming session.
- The City may provide host Tina Brown with 1-2 sentences of messaging to be delivered if she is asked about the Event to be used during event as well as throughout event-related WWM social media, when appropriate.

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, in a manner (including as to look and feel, frequency, etc.) as WWM will determine, acting reasonably.
- 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.
- 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.
- 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.
- Social Promotion to include (i) City-sponsored tweets using an agreed hashtag and @VisitSanantonio from Women in the World social media leading up to and during the Event, (ii) tweets from Tina Brown's social media 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's logo will be rotated on stage as guests arrive and settle into their seats.
- 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
2016 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:

<u>TYPE</u>	<u>AMOUNTS</u>
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.

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. 2016-09-15-_____ passed and approved on September 15, 2016, 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, 2017.
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 \$150,000.00, 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:

John Peterek
City Manager's Office
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

Recipient:

Molly Cox
President & CEO
SA2020
~~112 E. Pecan, Suite 1100~~ 123 Heiman
San Antonio, TX 78205

B. H. MC

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 15th day of 2016, 2016.

CITY OF SAN ANTONIO

SA2020

By:



John Peterek
Office of the City Manager

By:



Molly Cox
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:

1. Link SA2020 indicators to SA Tomorrow and engage the community in the 2017 Bond as it relates to both, to include the *Collaboration Points* set out below:
 - **Indicators**
 - Facilitate an initial session on current SA2020 initiatives and community indicators for essential SA Tomorrow partner city departments
 - Co-facilitate work sessions with the City's Department of Planning and Community Development (DPCD) for two (2) audiences (City staff and external agencies) to refine Indicators, Actions, and Targets in the Comprehensive Plan
 - House the final set of chosen Indicators, Actions, and Targets on the SA2020 platform and visually demonstrate the connection between the two data sets. DPCD will link to the SA2020 site
 - **Marketing and Engagement**
 - Assist in coordination of engagement strategy to include social and digital media for the Comprehensive Plan
 - **Grant Funding Roundtable**
 - Facilitate a conversation and engagement strategy on creative place-making within the SA Tomorrow framework
 - Support the application process, as applicable
2. Collect district-level data in relation to SA2020 goals (as available) and show progress and challenges by council district
4. Ongoing support of City of San Antonio engagement needs, including but not limited to, continued participation on the following committees: Office of Sustainability Summit Committee, EastPoint Steering Committee, and EastPoint Sustainability Committee
5. Continue updating and enhancing SA2020 website
6. Produce an Impact Report highlighting community initiatives and programs that are directly tied to SA2020 indicators
7. Ensure alignment of existing activities and pursuit of new opportunities toward SA2020's goal
8. Continue focus on increasing number of nonprofits that connect programs/strategies to outcomes related to SA2020 goals and utilize SA2020.org for engagement

9. **Increase public involvement in leadership, volunteerism, and philanthropic giving, as well as increase awareness of the issues surrounding the City of San Antonio**
10. **Update and analyze 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. 2016-XX-XX-_____, passed and approved on XXXXXXXX XX, 2016 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 2016-2017 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 \$150,000.00, 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 _____, 2016.

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 Executive Director of Department of Arts and Culture, pursuant to Ordinance No. 2016-09-15_____, passed and approved on the 15th day of September, 2016 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 Executive Director of City’s Department of Arts and Culture.

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, 2016 and terminate on September 30, 2017.

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 years 2016 and preparation for 2017 (“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.
- 3.1.6 Planning for 2017 Event

3.2 All work performed by Contractor hereunder shall be performed to the satisfaction of Executive Director. The determination made by Executive 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 Executive 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 Executive 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 Executive 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 \$ 300,000 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 the Executive Director. Final payment will be made to Contractor following written approval of the final work products and services by the Executive 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
Debbie Racca-Sittre, Interim Executive Director
Department of Arts and Culture
115 Plaza de Armas, Suite 102
San Antonio, TX 78205

If intended for Contractor, to:

Luminaria
Attn: Kathy Armstrong
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 Arts and Culture 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 Arts and Culture. 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:	For Bodily Injury and Property Damage 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	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence

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 Arts and Culture
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, Executive 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, Executive Director, representative, employee, contractor or subcontractor of **CONTRACTOR**, and their respective officers, agents employees,

Executive 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 Agreement 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 Agreement 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.

15.4 Removal/Relocation of artwork. Contractor acknowledges that the location of some or all of the artwork created through a Project on City property may necessitate future removal or relocation that may subject such artwork to destruction, distortion, mutilation or other modification if and when removed. Such removal or relocation, 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 the City's Public Art Policies and Procedures. Contractor agrees that a City decision made under this paragraph regarding if, when, and how, to remove such artwork is final.

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

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/CITY SUPPORTED PROJECTS

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 Agreement, 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.

17.3 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 of Arts & Culture” and by utilizing the official DA&C logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Agreement.

17.4 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. Additionally, contractor’s website shall include a hot link to www.getcreativesanantonio.com home page.

17.5 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 Agreement shall be considered to be authorized for funding by City.

17.6 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.

17.7 Contractor shall have all City-supported programs, events and services open to the public and said venues must be accessible in accordance with the 1990 American Disabilities Act (ADA) compliance.

17.8 All City-supported events must take place within the City of San Antonio city limits.

17.9 Contractor shall submit an application to Tricentennial Commission to become a “Tricentennial Partner” as all events sponsored by City of San Antonio during the 2018 year shall be designated as “Tricentennial Events” and marketed through the Tricentennial Commission as well as agency and DA&C efforts.

17.10 Contractor also understands and agrees that in addition to their regularly scheduled programs/events, special provisions may also be incorporated into the current year’s performance plan to include activities affiliated with San Antonio Film and music projects, and special works identified for the City’s Tricentennial Celebration. This requirement may include, but not be limited to the display and incorporation of logos associated with each of the identified entities, and special recognition on marketing materials, websites, and other sources of media. If necessary, this Agreement shall be amended to include such additional services.

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. 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.

Signatures on following page

EXECUTED and AGREED to be effective October 1, 2016.

CITY OF SAN ANTONIO

LUMINARIA

Debbie Racca-Sittre,
Interim Executive Director

Kathy Armstrong
Executive Director

Approved as to Form:

City Attorney

**AGREEMENT FOR VOLUNTEER COORDINATOR,
VISITOR ADMISSIONS AND BOOKKEEPING SERVICES
WITH THE 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 Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated September ____, 2016, 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".

RECITALS

WHEREAS, City and Consultant have had a successful relationship managing the San Antonio Botanical Garden since 1981, and

WHEREAS, pursuant to Ordinance No. 2010-10-21-0929, City and Consultant established a License and Lease Agreement to transition the operation and management of the San Antonio Botanical Garden to Consultant; and

WHEREAS, pursuant to Ordinance No. 2012-09-13-0696, City and Consultant entered into an Agreement to provide \$160,000 for a Volunteer Coordinator, Visitor Admissions and Bookkeeping Services, for the transitional operation and management of the San Antonio Botanical Garden; and

WHEREAS, City and Consultant wish to continue providing funds for a Volunteer Coordinator, Visitor Admissions and Bookkeeping Services for the continued operation and management of the San Antonio Botanical Garden,

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the Parties 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, 2016 and terminate on September 30, 2017.

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.

[Signatures appear on the next page.]

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:

Xavier D. Urrutia, Director
Parks and Recreation Department

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

Date: _____

Date: _____

ATTEST:

City Clerk

Approved as to Form:

City Attorney

RECITALS

1

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, 2016.

2.03 Payment will be made by City to Grantee on a biannual basis on October 30, 2016 and April 30, 2017. 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, 2017.

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, 2017.

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 _____, 2016.

CITY OF SAN ANTONIO

SAN ANTONIO PARKS FOUNDATION

By: _____
Xavier D. Urrutia, Director
Parks and Recreation Department

By: _____
Noah Almanza, President and CEO

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Operating Budget

EXHIBIT A

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

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

Proposed 2017 Operating Revenue

PROJECTED REVENUE

Events

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

Other Income

General Donations	\$XXXX
Newsletter & Online donations	XXXX
Interest paid from other accounts	XXXX

TOTAL PROJECTED REVENUE \$XXXX

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.

STATE OF TEXAS § FUNDING AGREEMENT –
§ MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO
COUNTY OF BEXAR § “TREE PLANTING PROJECT”

This AGREEMENT (“Agreement”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (“CITY”), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2016 and **MUNICIPAL GOLF ASSOCIATION - SAN ANTONIO** (“GRANTEE”), a Texas non-profit corporation, acting by and through its President/CEO, hereto duly authorized.

RECITALS

WHEREAS, Ordinance 2007-12-13-1354 assigned a License Agreement between City and GRANTEE to ensure a more efficient management of all municipal golf facilities in San Antonio; and

WHEREAS, Ordinance 2007-05-03-0479 approved a Management Agreement for the Management of the Municipal Golf Facilities; and

WHEREAS, CITY and GRANTEE share a common goal to improve the overall air quality, stormwater control, reduce temperatures and enhance the overall beauty of the greater San Antonio area by planting trees on CITY-owned municipal golf courses; and

WHEREAS, Ordinance 2014-12-11-1030 provided \$500,000 in Tree Canopy Funds to plant trees at Mission Del Lago municipal golf course; and

WHEREAS, Ordinance 2015- 09-10-0754 provided \$500,000 in Tree Canopy Funds to plant trees at Willow Springs municipal course; and

WHEREAS, Ordinance 2016-02-18-0113 provided \$600,000 in Tree Canopy Funds to plant trees at Riverside municipal golf course and other municipal golf courses; and

WHEREAS, CITY and GRANTEE continue to share a common goal to improve the overall air quality, stormwater control, reduce temperatures and enhance the overall beauty of the greater San Antonio area by planting trees on CITY-owned municipal golf courses; and

WHEREAS, as part of the CITY’s FY17 adopted budget, \$750,000 was appropriated from the Tree Canopy and Tree Mitigation Fund to provide funding to plant additional trees on CITY-owned municipal golf courses to be used by GRANTEE so that GRANTEE may conduct such projects,

NOW THEREFORE, the parties hereto (“Parties”) 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 from the date of execution by the Parties until September 30, 2017.

II. GENERAL RESPONSIBILITIES

2.01 CITY shall provide up to \$750,000.00 in Tree Mitigation and Tree Canopy Funds for GRANTEE's expenses for tree planting projects on municipal golf courses, as outlined in the attached "Exhibit A, Scope of Work," subject to review and approval by the Parks and Recreation Department. The Scope of Work may be amended as approved by the Director of the Parks and Recreation Department.

2.02 The funds provided under this Agreement shall be used to plant trees on municipal golf courses which are managed by GRANTEE, and for allowable expenses as outlined in Section 7 of this Agreement.

2.03 Unless written notification by GRANTEE to the contrary is received and approved by CITY, GRANTEE'S President/CEO shall be GRANTEE'S designated representative responsible for the administration of this Agreement on behalf of GRANTEE.

2.04 The Parks and Recreation Director ("Director") or his designee, is responsible for the administration of this Agreement on behalf of CITY.

2.05 This Agreement will permit the GRANTEE'S private contractor to perform installation of trees on City property.

2.06 Trees planted under this Agreement will not be used to offset any other tree mitigation requirements.

2.07 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in Sections 1.02 and 1.03 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 GRANTEE warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to GRANTEE, and to GRANTEE'S use of City Funds for this project.

3.02 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

- (A) Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.
- (B) Government Code provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).
- (C) Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that its construction contractor shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City has the right to audit certified payroll records as necessary in

accordance with this Agreement. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, Grantee shall cause its contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve Grantee from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

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 GRANTEE represents, warrants, assures and guarantees that the undersigned 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. FUNDING AND ASSISTANCE BY CITY

5.01 In consideration of GRANTEE'S performance of all services and activities set forth in this Agreement, CITY agrees to pay GRANTEE for all Eligible Expenses (as defined in Section 8.01) incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$750,000.00.

5.02 In order to partially offset GRANTEE'S expenses associated with the Project, the City will provide advanced payment in multiple disbursements during the term of this Agreement for the expenses reflected in this Agreement in Exhibit A: Scope of Work, as directly tied to the Implementation Plan reflected in Section 3.01 (D).

Distribution of funds will be based upon requests submitted by GRANTEE. Subsequent to disbursement, GRANTEE shall provide City with evidence of amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the paid invoice(s).

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 Section 8.01.

5.03 CITY shall not be obligated nor liable under this Agreement to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

**VI. RECEIPT, DISBURSEMENT AND ACCOUNT
OF FUNDS BY GRANTEE**

6.01 GRANTEE understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support of the use of such CITY funds.

6.02 GRANTEE agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received 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; and
- (B) That GRANTEE's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.03 GRANTEE agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

6.04 In order to be reimbursed for Eligible Expenses, GRANTEE agrees to submit to CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the subsequent paid invoice(s).

6.05 CITY agrees to provide GRANTEE written notice regarding any expenditure the CITY reasonably determines to be outside the permissible parameters of this Agreement. GRANTEE shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to GRANTEE, refund to the CITY those funds, determined to:

- (A) Have not been spent by GRANTEE strictly in accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

6.06 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) calendar days of receipt of a request for reimbursement as defined above.

6.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) calendar days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VII. ALLOWABLE EXPENDITURES

Expenditures of the funds by GRANTEE provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

7.01 The following shall be considered Eligible Expenses under this Agreement:

- (A) Purchase of all trees for implementation of this project.
- (B) Installation of all trees for implementation of this project.
- (C) Other allowable expenses associated with this work effort such as irrigation and maintenance activities, archaeological monitoring, repair of irrigation bubblers, and installation and repair of tree supports for the establishment period as deemed appropriate by the Parks and Recreation Department.

7.02 Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 GRANTEE further represents and warrants that as of the date hereof:

- (A) All information, data or reports heretofore or hereafter provided to CITY is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that GRANTEE shall provide CITY immediate written notice of any adverse material change in the financial condition of GRANTEE that may materially and adversely effect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE.

- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing indenture or agreement of GRANTEE.

IX. ACCESSIBILITY OF RECORDS

9.01 At any time during normal business hours and as often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all of its records pertaining to this Agreement 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.

9.02 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.

X. MONITORING AND EVALUATION

10.01 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities, and GRANTEE shall provide reasonable access to CITY for such activities, so as to ensure compliance by GRANTEE with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

XI. INDEMNIFICATION

11.01 GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, 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, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL

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

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

XII. INSURANCE

12.01 Prior to the commencement of any work under this Agreement, GRANTEE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's PARKS AND RECREATION Department, which shall be clearly labeled "**TREE PLANTING PROJECT**" 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 telephone 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 PARKS AND RECREATION Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 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.

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations	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

*b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	Coverage f. \$100,000
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*If applicable

12.04 GRANTEE agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of GRANTEE herein, and provide a certificate of insurance and endorsement that names the GRANTEE 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.

12.05 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). GRANTEE 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. GRANTEE shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: PARKS AND RECREATION Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- (A) 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;
- (B) 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;
- (C) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- (D) 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.

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

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

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

12.10 It is agreed that GRANTEE'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.

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

12.12 GRANTEE and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIII. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of

the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Contract Requirements and Commitment

CONTRACTOR understands and agrees that the following provisions shall be requirements of this contract, and by its execution, CONTRACTOR commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of CONTRACTOR to commit, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE and M/WBE subcontracting goals shall constitute default.

Waiver Request - A CONTRACTOR may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this contract by submitting the *Vendor Subcontracting Waiver Request* form (which is available at <http://www.sanantonio.gov/SBO/Forms.aspx>). The CONTRACTOR's Waiver request must fully document subcontractor unavailability despite the CONTRACTOR's good faith efforts to comply with the goals. Such documentation shall include all good faith efforts made by CONTRACTOR including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or “Certified”– the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other

entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form

and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the

CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in the CITY’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR’s and/or S/M/WBE firm’s performance and payment under CITY contracts due to the CITY’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding

CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor /Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or

HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

None. HOLD PENDING DETERMINATION BY GOAL SETTING COMMITTEE

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR 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 the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its

Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XIV. NONDISCRIMINATION

14.01 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.

XV. CONFLICT OF INTEREST

15.01 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.

15.02 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.

15.03 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.

XVI. POLITICAL ACTIVITY

16.01 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. CONTRACTING

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement 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 contractors with this Agreement shall be the responsibility of GRANTEE. GRANTEE is responsible to ensure that all permits required for the activities under this Agreement are obtained.

17.02 CITY shall in no event be obligated to any third party, including any sub-contractor of GRANTEE, for performance of or payment for work or services.

XIII. CHANGES AND AMENDMENTS

18.01 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 under authority granted by formal action of the Parties' respective governing bodies.

18.02 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.

XIX. ASSIGNMENTS

19.01 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring 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 person.

XX. SEVERABILITY OF PROVISIONS

20.01 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 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.

XXI. DEFAULT

21.01 Upon default by GRANTEE in the performance of its obligations hereunder, CITY shall give GRANTEE notice of the same and GRANTEE shall have 30 days following receipt of written notice of default from CITY (or such reasonably longer time as may be necessary provided GRANTEE commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If GRANTEE fails to timely cure such default, CITY may pursue all remedies available in law or at equity and/or other rights CITY may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

21.02 Upon default by CITY in the performance of its obligations hereunder GRANTEE shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from GRANTEE (or such reasonably longer time as may be necessary provided CITY commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If CITY fails to timely cure such default, GRANTEE may pursue all remedies available in law or equity and/or other rights GRANTEE may have in this Agreement, subject to the limitations set forth in Section 23.01.

XXII. NON-WAIVER OF PERFORMANCE

22.01 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 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.

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

22.03 No representative or agent of CITY may waive the effect of the provisions of this Article without formal action from the City Council.

XXIII. ENTIRE AGREEMENT

23.01 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, dated subsequent to the date hereof and duly executed by the Parties.

XIV. NOTICES

24.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

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

GRANTEE: President/CEO
Municipal Golf Association-San Antonio
2315 Avenue B
San Antonio, Texas 78215

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. 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) business days of such change.

XXV. PARTIES BOUND

25.01 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.

XXVI. RELATIONSHIP OF PARTIES

26.01 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.

XXVII. TEXAS LAW TO APPLY

27.01 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.

XIII. GENDER

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

XXIX. CAPTIONS

29.01 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 _____, 20____.

CITY OF SAN ANTONIO

**MUNICIPAL GOLF ASSOCIATION-
SAN ANTONIO**

By: _____
Xavier D. Urrutia, Director,
Parks and Recreation Department

By: _____
Jim Roschek, President and CEO

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A: Scope of Work

Exhibit A: Scope of Work

BACKGROUND

Municipal Golf Association-San Antonio was awarded a License Agreement and Management Agreement by the CITY in 2007, and has efficiently managed the CITY's municipal golf courses since that time.

STATEMENT OF WORK

As the GRANTEE, Municipal Golf Association-San Antonio will use up to \$750,000.00 from Tree Mitigation and Tree Canopy Funds to plant trees on select municipal golf courses. The projects include a plan to install and maintain various tree species and address archaeological monitoring, if applicable, at San Pedro Driving Range and Par 3, and other select municipal golf courses, subject to review and approval by the Parks and Recreation Department.

***DELIVERABLES:**

GRANTEE will plant, maintain, water and replace trees installed under this agreement during the establishment period. GRANTEE agrees to manage and perform all work as listed below:

Implementation Plan

- A) Submit an Implementation Plan to the Parks and Recreation Department for approval prior to commencement of any purchase, delivery, or planting of trees. Such Implementation Plan shall include a schedule of activities related to advanced site preparation including irrigation, staging/set up costs, tree purchase, delivery and installation.
- B) Ensure that a transparent process for the solicitation of a Request For Proposal (RFP) for the GRANTEE's selection of a contractor shall be easily accessible and viewable by the public, shall be clearly labeled "Request For Proposal" and posted directly on the GRANTEE's website, and shall include all terms, requirements and conditions of the RFP.
- C) Select contractor, source and oversee nursery stock installation and all appropriate establishment activities.
- D) Source stock from local nurseries to the extent possible.
- E) Implement winter/spring planting timeline within the contract term as approved by the Parks and Recreation Department.
- F) Plant a minimum of _____ trees at San Pedro Driving Range and Par 3, and _____ trees at other select municipal golf courses, subject to approval by the Parks and Recreation Department.
- G) Ensure that work will not impact utility lines.
- H) Require GRANTEE'S contractor to warranty trees for a period of one year.

- I) Take appropriate measures to maximize the survival rate at 80% or more.
- J) Maintain irrigation, mulching, and all other appropriate activities for the maintenance and care of trees during the establishment period, which may extend beyond the term of this Agreement.

*** GRANTEE agrees to provide each deliverable identified above no later than the timeline established by the San Antonio Parks and Recreation Department.**

DRAFT

NEC ENHANCEMENT MATCHING GRANT PROGRAM

GRANTEE AGREEMENT

PROPERTY AT: [REDACTED]

STATE OF TEXAS §
 §
 COUNTY OF BEXAR §

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 Director of the Department of Planning and Community Development pursuant to Ordinance No. 2015-09-10-XXXX, dated September 10, 2015, and [REDACTED] (hereinafter referred to as "GRANTEE"), Owner of subject property located at [REDACTED], San Antonio, Texas (hereinafter referred to as the "Property").

WHEREAS, CITY has earmarked \$100,000.00 in FY 2016 General Fund Budget to improve the marketability of the Perrin Beitel and Nacogdoches corridors that are included within the boundaries of the NEC Revitalization Initiative by enhancing the appearance and function of existing commercial buildings; and

WHEREAS, GRANTEE has submitted an application for, and is deemed eligible to receive funds based upon its application for façade, landscape and/or signage improvements at GRANTEE'S Property (hereinafter referred to as "Project"); and

WHEREAS, the City Council has designated the Department of Planning and Community Development as the CITY department responsible for the administration and monitoring of the Project and all matters pertaining thereto; and

WHEREAS, the CITY wishes to engage GRANTEE to implement and manage said Project; **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

1.1 Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall terminate on the earlier of (a) [REDACTED], or (b) Project completion.

II. RESPONSIBILITIES

2.1 GRANTEE hereby accepts responsibility for the performance, in a satisfactory and efficient manner as solely determined by CITY, of all services and activities set forth in this AGREEMENT.

2.2 Unless written notification by GRANTEE to the contrary is received and approved by CITY, [REDACTED], in his or her capacity as Owner of the Property shall be the GRANTEE'S representative responsible for the management of all contractual matters pertaining to this AGREEMENT.

2.3 CITY's Director of the Department of Planning and Community Development or his designee shall be CITY's representative responsible for the administration of this AGREEMENT.

2.4 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.2 and 2.3 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

3.1 GRANTEE shall obtain all necessary permits, if required, prior to the commencement of the Project.

3.2 GRANTEE shall coordinate with the appropriate utility provider(s) and/or CITY departments and obtain all necessary authorizations prior to commencement of the Project, and submit same to CITY's Department of Planning and Community Development within ten days of GRANTEE's receipt thereof.

3.3 GRANTEE shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting GRANTEE's operations pursuant to this AGREEMENT.

3.4 The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the City funded portion of this Agreement. GRANTEE agrees that its construction contractor performing work on the City funded portion of the Project will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 (attached hereto as Exhibit "C") and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

3.5 In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, GRANTEE shall request upon advertisement of construction bids, and the City will provide GRANTEE with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the Project, the GRANTEE is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the GRANTEE calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the GRANTEE is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the GRANTEE'S general contractor and all subcontractors for construction of each Phase. GRANTEE is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this AGREEMENT.

3.6 GRANTEE understands and acknowledges that CITY may request periodic reports or support to ensure adherence to prevailing wage rates provisions.

3.7 Upon audit of the records and certified payrolls, should the CITY or its auditors find any wage violations, GRANTEE shall cause its construction contractor to forfeit as a penalty to the CITY sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman, or mechanic is paid less than the said stipulated rates for any work done pursuant to this AGREEMENT, by the contractor or any sub-contractor.

3.8 GRANTEE understands and agrees that the establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code and City Ordinance 2008-11-20-1045 shall not be construed to relieve GRANTEE, GRANTEE's contractor or any subcontractor from the obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder.

3.9 GRANTEE, its contractor and any subcontractor, in the execution of this AGREEMENT, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. GRANTEE and its contractor and any subcontractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

3.10 GRANTEE shall forward any questions regarding these prevailing wage provisions to LaborComplianceOffice-LCO@sanantonio.gov.

IV. LEGAL AUTHORITY

4.1 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.

4.2 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.

4.3 In the event that a dispute arises as to the legal authority to enter into this AGREEMENT of either the GRANTEE or the person signing on behalf of GRANTEE, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, GRANTEE shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

V. MAINTENANCE OF EFFORT

5.1 GRANTEE agrees that the funds and resources provided to it under the terms of this AGREEMENT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources,

services, or other benefits which would have been available to, or provided through, GRANTEE had this AGREEMENT not been executed.

VI. PERFORMANCE BY GRANTEE

6.1 GRANTEE, in accordance and compliance with the terms, provisions, and requirements of this AGREEMENT, shall manage, perform, and provide all of the activities and services set forth in the Project Application attached hereto, and incorporated herein for all purposes as Exhibit "A," to CITY's satisfaction, utilizing only those funds available for utilization under the Project Budget, also attached hereto and incorporated herein for all purposes as Exhibit "B."

6.2 Modifications or alterations to Exhibit "B" may be made only pursuant to the prior written approval of CITY's Director of the Department of Planning and Community Development or his designee.

VII. REIMBURSEMENT BY CITY

7.1 In consideration of GRANTEE'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 GRANTEE for all eligible expenses incurred hereunder. Such reimbursement, however, shall be in accordance with the Project Budget set forth in Exhibit "B" and shall be subject to any and all limitations and provisions set forth in this Article and in Article VIII hereunder.

7.2 GRANTEE understands and agrees that CITY shall conduct a final inspection of the Project to ensure that GRANTEE has performed hereunder to CITY's satisfaction, prior to disbursement of AGREEMENT funds.

7.3 GRANTEE understands and acknowledges that reimbursement by the CITY will be made after Project completion and subject to final inspection. Notwithstanding any other provision of this AGREEMENT, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed fifty percent (50%) of the lesser of a) the Project Cost as outlined in the Project Budget (Exhibit "B"), or b) the actual Project Costs, provided however, in no event shall CITY pay GRANTEE an amount greater than \$ [REDACTED]. Said payments shall be made upon CITY's approval of the completed Project and GRANTEE's request for reimbursement, to be in a form determined by CITY, and accompanied by any and all receipts, invoices, cancelled checks, and other documentation within thirty (30) days of Project completion.

7.4 CITY shall not be liable for any GRANTEE cost, or portion thereof, which:

- (A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;
- (B) Was incurred prior to the commencement date or subsequent to the termination date of this AGREEMENT as specified in Article I hereinabove;

- (C) Is not in strict accordance with the terms of this AGREEMENT, including all exhibits attached hereto; and/or
- (D) Is not an allowable cost as defined by Article IX of this AGREEMENT or by the Project Budget (Exhibit "B").

7.5 CITY shall not be obligated or liable under this AGREEMENT to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

VIII. RECEIPT, DISBURSEMENT, AND ACCOUNT OF FUNDS BY GRANTEE

8.1 Within ten (10) working days of CITY's written request therefor, GRANTEE shall refund to CITY any sum of money paid by CITY to GRANTEE later determined to:

- (A) Have resulted in overpayment to GRANTEE;
- (B) Have not been spent by GRANTEE strictly in accordance with the terms of this AGREEMENT; and/or
- (C) Not be supported by adequate documentation to fully justify the expenditure.

8.2 Upon termination of this AGREEMENT should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, GRANTEE shall refund such amount to CITY within ten (10) working days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this AGREEMENT or from funds received from or through the CITY.

IX. ALLOWABLE COSTS

9.1 Costs shall be considered allowable only if approved in writing and incurred directly and specifically in the performance of and in compliance with this AGREEMENT and with all city, state and federal laws, regulations, and ordinances affecting GRANTEE's operations hereunder.

9.2 Approval of GRANTEE's budget as set forth in Exhibit "B," however, shall not constitute prior written approval of all the items included therein. For example, CITY's prior written authorization shall be required on any and all sub-contracts. GRANTEE understands and acknowledges that CITY shall not be obligated to any third parties (including any sub-contractors of GRANTEE), nor shall CITY funds be used to pay for contract services extending beyond the expiration of this AGREEMENT.

9.3 Written requests for prior approval shall be GRANTEE's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Written approval by CITY must be obtained prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property. Procurements and/or purchases which must be approved pursuant to the terms of this AGREEMENT shall be conducted entirely in accordance with all applicable terms, provisions, and requirements hereof.

X. PROGRAM INCOME

This Article intentionally left blank

XI. FURTHER REPRESENTATION, WARRANTIES AND COVENANTS

11.1 GRANTEE further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY are, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
- (B) No litigation or proceedings are presently pending or threatened against GRANTEE;
- (C) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing indenture or agreement of GRANTEE;
- (D) GRANTEE has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
- (E) None of the assets of GRANTEE are both currently and for the duration of this AGREEMENT subject to any lien or encumbrance of any character, except for current taxes not delinquent, and except as shown in the financial statements provided by GRANTEE to CITY.

11.2 During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, GRANTEE covenants that it shall not, without the prior written consent of CITY's Director of the Department of Planning and Community Development or his designee:

- (A) Mortgage, pledge, or otherwise encumber or cause to be encumbered any of the assets of GRANTEE now owned or hereafter acquired by it;
- (B) Permit any pre-existing mortgages, liens, or other encumbrances to remain on or attached to any of the assets of GRANTEE which are allocated to the performance of this AGREEMENT and with respect to which CITY has ownership hereunder;
- (C) Sell, assign, pledge, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;
- (D) Sell, convey, lease, or sub-lease all or any substantial part of its assets; or

- (E) Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity, or corporation.

XII. MAINTENANCE OF RECORDS

12.1 GRANTEE agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received 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 applicable federal and state regulations establishing standards for financial management; and
- (B) That GRANTEE's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

12.2 GRANTEE agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the expenditures of funds under this AGREEMENT.

12.3 GRANTEE agrees to include the substance of this Article in all of its sub-contracts.

12.4 Nothing in this Article shall be construed to relieve GRANTEE of fiscal accountability and liability pursuant to this AGREEMENT and any applicable rules, regulations, and laws.

XIII. ACCESSIBILITY OF RECORDS

13.1 At any reasonable time and as often as CITY may deem necessary, GRANTEE shall make all of its records relative to the Project and/or this AGREEMENT 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. GRANTEE's records shall include, but shall not be limited to, the following: contracts and invoices.

XIV. MONITORING AND EVALUATION

14.1 CITY shall perform periodic on-site inspections of GRANTEE's performance pursuant to the terms of this AGREEMENT.

14.2 GRANTEE agrees that CITY may carry out inspections and evaluation activities so as to ensure compliance by GRANTEE with this AGREEMENT, the Project Application set forth in Exhibit "A," and with the program assurances and certifications executed by CITY, and with all other laws, regulations, and ordinances related to the performance hereof.

14.3 GRANTEE agrees to cooperate fully with CITY in the development, implementation, and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be necessary for its effective fulfillment of its inspection and evaluation responsibilities.

14.4 GRANTEE agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its inspections of GRANTEE's performance and that it will designate one of its staff to coordinate the inspection process as requested by CITY staff.

XV. INSURANCE

15.1 GRANTEE agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this AGREEMENT, GRANTEE shall furnish copies of all required endorsements and completed Certificate of Insurance to the CITY's Department of Planning and Community Development, which shall be clearly labeled "[REDACTED]" in the Description of Operations block of the Certificate. The Certificate 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 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 Department of Planning and Community 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 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 GRANTEE's financial integrity is of interest to the CITY; therefore, subject to GRANTEE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, GRANTEE shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at GRANTEE's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> 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. \$100,000.00

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

City of San Antonio
 Attn: Department of Planning and Community Development
 P.O. Box 839966
 San Antonio, Texas 78283-3966

- (F) GRANTEE 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.
 - 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, GRANTEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend GRANTEE's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
- (H) In addition to any other remedies the CITY may have upon GRANTEE'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 GRANTEE to stop work hereunder, and/or withhold any payment(s) which become due to GRANTEE hereunder until GRANTEE demonstrates compliance with the requirements hereof.
- (I) Nothing herein contained shall be construed as limiting in any way the extent to which GRANTEE may be held responsible for payments of damages to persons or property resulting from GRANTEE's or its subcontractors' performance of the work covered under this AGREEMENT.
- (J) It is agreed that GRANTEE'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) GRANTEE and any subcontractors are responsible for all damage to their own equipment and/or property.

XVI. INDEMNIFICATION

16.1 GRANTEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to GRANTEE's activities under this AGREEMENT, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, contractor or subcontractor of GRANTEE, and their respective officers, agents, employees, directors, and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. 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. GRANTEE shall promptly advise the CITY in writing of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

16.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article (Article XVI), is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT, and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

16.3 It is expressly understood and agreed that GRANTEE is and shall be deemed to be an independent contractor and operator responsible to all parties for its acts or omissions and that CITY shall in no way be responsible therefor.

XVII. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

17.1 GRANTEE shall comply with all applicable local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws in contracting with third parties to perform the project work hereunder.

17.2 So that CITY can investigate compliance with local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws, GRANTEE shall furnish to CITY any and all information and reports requested by CITY, and shall permit access by CITY of any and all of its books, records, and accounts.

17.3 In the event of non-compliance by GRANTEE (or GRANTEE's sub-contractors) with local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws, this AGREEMENT may be canceled, terminated, or suspended by CITY, in whole or in part, and GRANTEE may be barred from further contracts with CITY.

XVIII. NONDISCRIMINATION

18.1 GRANTEE covenants that it, or its agents, employees or anyone under its control 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, or

familial status in employment practices or in the use of or admission to the premises at, in or on which the Project described herein is to be performed, which said discrimination GRANTEE acknowledges is prohibited.

XIX. CONFLICT OF INTEREST

19.1 GRANTEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in 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 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 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 a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

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

XX. NEPOTISM

20.1 GRANTEE shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by GRANTEE or who is a member of GRANTEE’s governing body. The term “member of immediate family” shall include: wife, husband, son, daughter, mother, father, brother, sister, in-law, aunt, uncle, cousin, nephew, niece, step-parent, step-child, half-brother, and half-sister.

XXI. POLITICAL ACTIVITY

21.1 None of the performance rendered 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.

XXII. PUBLICITY

22.1 GRANTEE shall allow CITY to display a sign on the Project premises advertising CITY’s participation in this Project.

XXIII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

23.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any

proposal or contract, and any responses, inquiries, correspondence and related material submitted by GRANTEE, shall, upon receipt, become the property of CITY.

XXIV. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

24.1 GRANTEE certifies, and the CITY relies thereon in execution of this AGREEMENT, that neither GRANTEE nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department.

24.2 “Principals,” for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

24.3 GRANTEE shall provide immediate written notice to CITY, in accordance with Article XXXVIII, if, at any time during the term of this AGREEMENT, including any renewals hereof, GRANTEE learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

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

XXV. SUB-CONTRACTING

25.1 Any other clause of this AGREEMENT to the contrary notwithstanding, none of the work or services covered by this AGREEMENT shall be sub-contracted without the prior written approval of CITY. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written contract or agreement 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 sub-contractors with this AGREEMENT shall be the responsibility of GRANTEE.

25.2 GRANTEE agrees that no sub-contract approved pursuant to this AGREEMENT shall provide for payment on a “cost plus a percentage of cost” basis.

25.3 GRANTEE warrants and certifies that should the level of work outlined in the Project Application, set forth in Exhibit “A,” require special training, license, and/or certification to provide said service, GRANTEE or sub-contractor hired to perform such work has the required training, license and/or certification, and GRANTEE shall provide written proof to CITY prior to any such work being performed.

25.4 Despite CITY approval of a sub-contract, CITY shall in no event be obligated to any third party, including any sub-contractor of GRANTEE, for performance of work or services, nor

shall CITY funds ever be used for payment of work or services performed prior to the date of AGREEMENT execution or extending beyond the date of AGREEMENT expiration.

XXVI. CHANGES AND AMENDMENTS

26.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and GRANTEE.

26.2 Whenever and as often as deemed necessary by CITY, CITY may request and require changes to GRANTEE's Project Application (Exhibit "A") or Project Budget (Exhibit "B"). Such changes as requested or required by CITY, however, must be by written amendment hereto and may incorporate therein increases or decreases in the total monetary obligation of CITY to GRANTEE as provided for pursuant to the terms, provisions, and conditions of this AGREEMENT.

26.3 Except pursuant to (a) prior submission by GRANTEE of detailed information regarding budget and Project revisions, and (b) prior written approval thereof by CITY, GRANTEE shall not make transfers between or among line items approved within the Project Budget set forth as Exhibit "B." Instead, GRANTEE shall request budget revisions in writing and in a form prescribed by CITY; such request for revisions, however, shall not increase the total monetary obligation of CITY as provided for pursuant to this AGREEMENT, nor shall said revisions significantly change the nature, intent, or scope of the Project funded hereunder.

26.4 In the event that the level of funding for GRANTEE or for the Project described herein is altered, GRANTEE shall submit, immediately upon request by CITY, revised budget and Project information so as to enable re-evaluation by CITY of the original funding levels set forth in Exhibit "B."

26.5 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.

XXVII. SUSPENSION OF FUNDING

27.1 Upon determination by CITY of GRANTEE's failure to timely and properly perform pursuant to the provisions of this AGREEMENT, CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion and upon five (5) working days written notice to GRANTEE, withhold further payments to said GRANTEE. CITY's notice shall specifically set forth GRANTEE's alleged default or failure as well as the action required for cure thereof.

27.2 The period of funding suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. Upon expiration of the suspension period:

- (A) Should CITY determine that the default or deficiency has been cured, GRANTEE may be restored to full compliance status and paid all eligible funds withheld during the suspension period; or
- (B) Should CITY determine continued non-compliance, the provisions of Article XXVIII hereunder may be effectuated.

XXVIII. TERMINATION

28.1 “Termination” of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

28.2 CITY may terminate this AGREEMENT for any of the following reasons:

- (A) Neglect or failure by GRANTEE to perform or observe any of the terms, conditions, covenants, or guarantees of this AGREEMENT or of any written contract or amendment between CITY and SUB-GRANTEE;
- (B) Failure by GRANTEE to cure, within the period prescribed pursuant to the above Article XXVII of this AGREEMENT, any default or deficiency basis for suspension of funding hereunder;
- (C) Finding by CITY that GRANTEE:
 - (1) is in such unsatisfactory financial condition as to endanger performance under this AGREEMENT, including, but not limited to:
 - (a) The apparent inability of GRANTEE to meet its financial obligations;
 - (b) The appearance of items that reflect detrimentally on the creditworthiness of GRANTEE, including, but not limited to, liens, encumbrances, etc., on the assets of GRANTEE;
 - (2) has allocated inventory to this AGREEMENT substantially exceeding reasonable requirements; or
 - (3) is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this AGREEMENT;
- (D) Appointment of a trustee, receiver or liquidator for all or a substantial part of GRANTEE’s property, or institution of bankruptcy, reorganization, rearrangement of, or liquidation proceedings by or against GRANTEE;
- (E) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of GRANTEE’s creditors;

- (F) Inability by GRANTEE to conform to changes in local, state, and federal rules, regulations and laws as provided for in Article III and in paragraph number 26.5 of this AGREEMENT; and
- (G) Violation by GRANTEE of any rule, regulation, or law to which GRANTEE is bound or shall be bound under the terms of this AGREEMENT.

28.3 CITY may terminate this AGREEMENT for convenience at any time after which GRANTEE shall be paid an amount not to exceed the total accrued expenditures as of the effective date of termination. In no event, however, will compensation to GRANTEE exceed an amount which bears the same ratio to the total compensation as the services actually performed by GRANTEE bears to the total services required of GRANTEE, less payments previously made.

28.4 GRANTEE may terminate this AGREEMENT for any of the following reasons:

- (A) Cessation of outside funding upon which GRANTEE depends for performance hereunder; GRANTEE may opt, however, within the limitations of this AGREEMENT and with the written approval of CITY, to seek an alternative funding source, provided that the termination of funding by the initial outside source was not occasioned by a breach of agreement as defined herein or as defined in a contract between GRANTEE and the funding source in question; or
- (B) Upon the dissolution of the GRANTEE organization provided such dissolution was not occasioned by a breach of this AGREEMENT.

28.5 Upon a decision to terminate by either CITY or GRANTEE, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

28.6 Upon receipt of notice to terminate, GRANTEE shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this AGREEMENT. To this effect, CITY shall not be liable to GRANTEE or GRANTEE's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

28.7 Within thirty (30) days after receipt of notice to terminate, GRANTEE shall submit a statement to CITY, indicating in detail the services performed under this AGREEMENT prior to the effective date of termination.

28.8 Any termination of this AGREEMENT as herein provided shall not relieve GRANTEE from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against GRANTEE hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from GRANTEE. Instead, all rights, options, and remedies of CITY contained in this AGREEMENT shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this AGREEMENT.

28.9 Should this AGREEMENT be terminated by either party hereto for any reason, including termination under paragraph number 28.3 of this AGREEMENT, and if the work required hereunder of GRANTEE is not fully completed to the satisfaction of CITY in accordance with the terms of this AGREEMENT, GRANTEE shall refund any and all sums of money paid by CITY to GRANTEE within ten (10) working days of CITY's written request therefor.

28.10 Upon termination of this AGREEMENT by CITY under paragraph number 28.2(A), GRANTEE shall be barred from future contracts with CITY absent the express written consent of the City Manager of CITY, or City Manager's designee.

XXIX. NOTIFICATION OF ACTION BROUGHT

29.1 In the event that any claim, demand, suit, proceeding, cause of action, or other action (hereinafter collectively referred to as "claim") is made or brought against GRANTEE, GRANTEE shall give written notice thereof to CITY within two (2) working days after itself being notified. GRANTEE's notice to CITY shall state the date and hour of notification to GRANTEE of the claim, the names and addresses of those instituting or threatening to institute the claim, the basis of the claim, and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XXXVIII of this AGREEMENT.

XXX. ASSIGNMENTS

30.1 GRANTEE shall not transfer, pledge or otherwise assign this AGREEMENT, any interest in and to same, or any claim arising thereunder without first procuring 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 person.

XXXI. LEGAL EXPENSES

31.1 Under no circumstances will the funds received under this AGREEMENT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY or any other public entity.

31.2 During the term of this AGREEMENT, if GRANTEE files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if GRANTEE is in violation of paragraph 31.1 above.

31.3 GRANTEE, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the CITY remains unresolved.

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

XXXII. SEVERABILITY OF PROVISIONS

32.1 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.

XXXIII. NON-WAIVER OF PERFORMANCE

33.1 No waiver by CITY of a breach of any of the terms, conditions, covenants, or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by 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.

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

33.3 No representative or agent of CITY may waive the effect of the provisions of this Article.

XXXIV. SPECIAL CONDITIONS

34.1 GRANTEE understands and agrees that if it fails to maintain the improvements within the time proscribed in the Covenant (hereinafter described) and pursuant to paragraph 33.1 hereinabove, GRANTEE shall refund to CITY all monies paid to GRANTEE by CITY under this AGREEMENT within thirty (30) days of the date CITY requests such refund from GRANTEE. The word "maintain" shall be defined herein as, to keep in a condition of good repair and preserve its renovated and improved state, and preserve from failure or decline.

34.2 GRANTEE, if GRANTEE is the record title holder of the subject property herein, shall execute, or shall have the record title holder of said Property execute a Covenant and Agreement (hereinafter referred to as "Covenant") with CITY providing that the Property in which the Project is to be performed shall be maintained for a period of not less than five (5) years from the date of execution hereof.

34.3 GRANTEE shall abide by and ensure compliance with the Covenant to maintain subject Property for commercial use such as defined by the City of San Antonio's Unified Development Code Sections 35-310.08 through 35-310.14.

34.4 GRANTEE shall ensure that all third party contracts pursuant to this Project shall be at arms length.

XXXV. SECTARIAN ACTIVITY

35.1 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.

XXXVI. ENTIRE AGREEMENT

36.1 This AGREEMENT and the Covenant, if applicable and executed, constitute the final and entire agreements between the parties hereto and contains all of the (including all exhibits hereto) terms and conditions agreed upon. Except for the Covenant, if applicable and executed, no other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXXVII. INTERPRETATION

37.1 In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this AGREEMENT or its governing rules, regulations, laws, codes, or ordinances, CITY shall have the final authority to render or secure an interpretation.

XXXVIII. NOTICES

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

CITY:

City of San Antonio
Department of Planning and Community Development
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Director

GRANTEE:



San Antonio, Texas



Notice 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 such change.

XXXIX. PARTIES BOUND

39.1 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.

XL. GENDER

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

XLI. RELATIONSHIP OF PARTIES

41.1 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.

XLII. TEXAS LAW TO APPLY

42.1 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. Venue and jurisdiction arising under or in connection with this AGREEMENT shall lie exclusively in Bexar County, Texas.

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XLIII. CAPTIONS

43.1 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.

EXECUTED this the _____ day of _____, [REDACTED].

CITY OF SAN ANTONIO,
a Texas municipal corporation

GRANTEE:

By: _____

[REDACTED]
Director
Department of Planning and
Community Development

By: _____

[REDACTED]

APPROVED AS TO FORM:

By: _____

[REDACTED]
Assistant City Attorney

Attachments:

Exhibit "A" – Project Application

Exhibit "B" – Project Budget

Exhibit "C" – City Ordinance 2008-11-20-1045

STATE OF TEXAS	§	FUNDING AGREEMENT
	§	FOR ECONOMIC DEVELOPMENT
COUNTY OF BEXAR	§	ACTIVITIES

This Funding Agreement For Economic Development Activities (this “Agreement”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”) acting by and through its City Manager and the San Antonio Economic Development Corporation by and through its Executive Director (hereinafter referred to as “SAEDC”), 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.

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

“Director” shall mean the acting director of City’s Economic Development Department.

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, 2016 and terminate on September 30, 2017.

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 SAEDC agrees to provide the services described in this Article III, entitled “Scope of Services” in exchange for the compensation described in Article IV. entitled “Compensation.”

3.02 In addition to those tasks identified in SAEDC’s FY2017 Annual Budget (Exhibit A), GRANTEE shall collaborate with the City and other community economic

development partners in focusing on the achievement of the following goals during the Term of this Agreement:

- A. GRANTEE shall serve as a resource for local economic developers, including the CITY's Economic Development Department (EDD), in identifying opportunities for assisting startup companies in the City's targeted industries.
- B. GRANTEE shall work with local industry leaders to identify San Antonio's competitive strengths and collaborate with organize industry leadership to identify and execute key strategic activities towards the advancement of these strengths.
- C. GRANTEE shall coordinate with SA2020, as requested by the City's EDD, towards progress of the SA2020 Vision Goals in the cause area of Economic Competitiveness.
- D. GRANTEE shall work with the San Antonio Economic Development Foundation (SAEDF), as requested by the City's EDD, toward implementation of the Forward San Antonio Strategic Plan.
- E. GRANTEE shall assist the City's EDD in helping to secure targeted industry prospects, jobs, and investment to locate, expand or initiate economic development projects in San Antonio
- F. GRANTEE shall work in conjunction with partners such as The Texas Research and Technology Foundation, BioMed SA, the San Antonio Tech Bloc and local universities towards the development of an ecosystem to support startup companies in the City's targeted industries.
- G. GRANTEE shall assist the City EDD and other community partners in developing and supporting recruitment strategies and tools to attract world-class scientists, physicians and research teams to San Antonio.
- J. GRANTEE shall use its relationships with local economic development partners and private sector companies to assist the City EDD and SAEDF organize company visits for the economic development community's business retention and expansion team and facilitate dialogue about business challenges and opportunities.
- K. GRANTEE shall work with the Convention and Visitor's Bureau and tourism industry as requested to attract targeted industry conventions and conferences to San Antonio and expose attendees to the CITY's targeted industries while they are here.

3.2 All work performed by SAEDC hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by SAEDC, 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 SAEDC'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 SAEDC

4.1 In consideration of SAEDC'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 SAEDC an amount not to exceed TWO HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$200,000.00) as total compensation, to be paid to SAEDC upon execution of this Agreement and the SAEDC providing evidence of the SAEDC Board and the City Council approving the SAEDC FY 2017 Budget.

4.2 No additional fees or expenses of SAEDC shall be charged by SAEDC nor be payable by City. The parties hereby agree that all compensable expenses of SAEDC have been provided for in the total payment to SAEDC as specified in section 4.1 above. Total payments to SAEDC 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 performed at the request of the City require written approval by City. The approval official shall be Director. City shall not be obligated or liable under this Agreement to any party, other than SAEDC, 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 SAEDC for the City at the request of the Director 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 SAEDC.

5.2 SAEDC 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 SAEDC 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 SAEDC 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, SAEDC shall retain the records until the resolution of such litigation or other such questions. SAEDC 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 SAEDC to return said documents to City prior to or at the conclusion of said retention.

6.3 SAEDC shall notify City, immediately, in the event SAEDC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SAEDC 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 either party upon THIRTY (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 XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should SAEDC 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. SAEDC shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAEDC fails to cure the default within such fifteen-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 SAEDC 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 SAEDC against SAEDC'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 RESERVED.
- 7.4.2 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, SAEDC 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 SAEDC, or provided to SAEDC, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SAEDC in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at SAEDC's sole cost and expense. Payment of compensation due or to become due to SAEDC is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SAEDC 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 SAEDC to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by SAEDC of any and all right or claims to collect moneys that SAEDC 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, SAEDC shall cease all operations of work being performed by SAEDC 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 SAEDC 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: Director
Economic Development Dept.
P.O. Box 839966
San Antonio, TX 78283

If intended for SAEDC, to:

SAEDC
Attn: Executive Director
P.O. Box 839966
San Antonio, TX 78283

IX. RESERVED

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, SAEDC shall furnish an original completed Certificate(s) of Insurance to the City's Economic Development Office and City Clerk's Office, and which shall be clearly labeled "SAEDC – Annual Funding" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's Economic Development Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof

and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 A SAEDC's financial integrity is of interest to the City; therefore, subject to SAEDC's right to maintain reasonable deductibles in such amounts as are approved by the City, SAEDC shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAEDC's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the minimum amounts required by state statute and the SAEDC governing board.

SAEDC SHALL BE INSURED TO THE EXTENT REQUIRED BY STATE LAW

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by 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). SAEDC 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 Section 10.6 herein within 10 days of the requested change. SAEDC shall pay any costs incurred resulting from said changes.

10.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, SAEDC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if SAEDC knows of said change in advance, or ten (10) days notice after the change, if the SAEDC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.6 If SAEDC fails to maintain the aforementioned insurance, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of SAEDC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon SAEDC'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 SAEDC to stop work hereunder, and/or

withhold any payment(s) which become due to SAEDC hereunder until SAEDC demonstrates compliance with the requirements hereof.

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

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

XI. RESERVED

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 SAEDC 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 SAEDC. SAEDC, its employees or its subcontractors shall perform all necessary work.

12.2 RESERVED.

12.3 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 SAEDC. City shall in no event be obligated to any third party, including any subcontractor of SAEDC, 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.

12.4 Except as otherwise stated herein, SAEDC 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, SAEDC shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SAEDC, assignee, transferee or subcontractor.

12.5 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 SAEDC 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 SAEDC 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 SAEDC shall in no event release SAEDC from any obligation under the terms of this Agreement, nor shall it relieve or release SAEDC from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

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

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 SAEDC 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.

15.2 Pursuant to the subsection above, SAEDC 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. SAEDC further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XVI. AMENDMENTS

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 SAEDC, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

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.

XVIII. RESERVED

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

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

XXI. LAW APPLICABLE

21.1 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.

21.2 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.

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

EXHIBIT A: SAEDC FY2017 ANNUAL BUDGET

XXVI. ENTIRE AGREEMENT

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 XVI. Amendments.

EXECUTED and **AGREED** to this the _____ day of _____, 2016.

CITY:

SAEDC:

Assistant City Manager

Ed Davis
Executive Director

ATTEST:

City Clerk

Approved as to Form:

City Attorney

STATE OF TEXAS § **CHAPTER 380 ECONOMIC DEVELOPMENT**
 § **PROGRAM GRANT AGREEMENT OF THE CITY**
 § **OF SAN ANTONIO**

COUNTY OF BEXAR §

This Chapter 380 Economic Development Program Grant Agreement (hereinafter referred to as this “Agreement”) is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager and the San Antonio Economic Development Foundation (“SAEDF”), both of which may be referred to herein collectively as the “Parties” or individually as a “Party”.

RECITALS

WHEREAS, SAEDF is engaged in economic development activities; and

WHEREAS, SAEDF is the acting fiscal agent of SA WORKS as defined below and is seeking economic grant support from the CITY to undertake and complete economic development activities as more specifically described in **Article III** ; and

WHEREAS, the CITY has identified funds to be made available to SAEDF in the form of a Chapter 380 Economic Development Program Grant for use in undertaking and completing economic development activities in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code the CITY is authorized to establish a program to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; **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.

ARTICLE I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings ascribed below:

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

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

“Director” shall mean the individual engaged by SAEDF and the SA WORKS Board of Directors as the Director of SA WORKS

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

“SA WORKS” shall mean the industry led coalition staffed by SAEDF assembled to develop a comprehensive human capital strategy to fill the city’s most pressing talent needs.

ARTICLE II. TERM

2.1 This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect through September 30, 2017 (“Term”), unless otherwise terminated on an earlier date or extended in accordance with the terms of this Agreement.

ARTICLE III. SCOPE OF WORK

3.1 SAEDF agrees to provide the services described below as the beneficiary of this grant described in Article IV of this Agreement.

3.1.1 SAEDF and Director of SA WORKS, in the use of all funds granted, agree:

- a.) SA Works Action Plan Scope of Work: SAEDF shall develop a scope of work for an SA Works Action plan to further the goals of SA Works in areas to include:
 - a. Targeted Industry Talent Gaps: quantifying and addressing industry-verified talent gaps constraining growth and competitiveness.
 - b. K-16+ Alignment: defining and enacting or supporting efforts to align career pathways and interventions in the K-16+ system.
 - c. Connecting the Underserved: connecting citizens who are unemployed, the formerly incarcerated, or reside in chronically depressed areas of San Antonio.
- b.) Delivery of SA Works Action Plan: SAEDF shall by no later than January 30, 2017 deliver a complete Action Plan outlining roles, processes, goals and strategies through the year 2020 and in compliance with any applicable procurement requirements associated with these grant funds.
- c.) Scope of Work for Chief Technology and Recruitment Officer (CTRO): SAEDF shall no later than January 30, 2017, and in conjunction with industry partners, to include Tech Bloc, develop an annual action plan for the funding of a CTRO at which time SA Works shall:
 - i. Secure written approval of the CTRO Action Plan by the City of San Antonio Director of Economic Development.
 - ii. Enter into an agreement based on the CTRO Action Plan in order to hire a CTRO.
 - iii. Submit quarterly assessments on the effectiveness of the CTRO to City.

3.1.3 In any event, administrative costs, and other expenses of SAEDF associated with this agreement including all ancillary, administrative, and other associated expenses of SAEDF associated with this agreement shall be in-kind contributions.

3.2 Within thirty (30) days of adoption by City Council of this agreement, City and SAEDF shall finalize Article III outlining the milestones to be achieved and procedures to be utilized to deliver the Services during the Term of this agreement. The City and SAEDF shall work jointly to finalize the Article III and after approval by each respective Director, Article III shall become incorporated into this Agreement.

3.3 SAEDF agrees that these funds will be utilized exclusively on SA WORKS related issues. City shall have the right to terminate this Agreement in whole or in part in accordance with Article VI, should SAEDF's work related to the position of Director and the agreed upon work program outlined in **Article III** to be unsatisfactory to City.

ARTICLE IV. GRANT TO SAEDF

4.1 In consideration of the performance of Article III in a satisfactory and efficient manner, City agrees to provide SAEDF a grant for work and activities as set forth in this Agreement, an amount up to but not to exceed Two Hundred and Fifty Thousand Dollars and Zero cents (\$250,000.00) ("Grant funds"). SAEDF shall submit such invoice for \$100,000 following final execution of this Agreement and an invoice for \$150,000 upon completing Article 3.1.1 (c) i.

4.2 SAEDF shall return any Grant funds that are not spent as set forth in Subsection 3.1.2 within thirty (30) calendar days of written notice from City provided in accordance with Section 7.1. Additionally, if any or all SAEDF's services are unsatisfactory to City, as required by the terms of this Agreement, SAEDF shall return any Grant funds associated with such unsatisfactory work within thirty (30) calendar days of written notice from City provided in accordance with Section 7.1. The purposes of this Agreement, "unsatisfactory work" shall mean that any item in **Article III** was not accomplished by the date specified

4.3 No additional fees or expenses of SAEDF shall be charged by SAEDF nor be payable by City. The parties hereby agree that all compensable expenses of SAEDF have been provided for in the total payment to SAEDF as specified in section 4.1 above. Total payments to SAEDF cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced by the passage of an Ordinance by the City Council.

4.4 City shall not be obligated or liable under this Agreement to any party, other than SAEDF, for the payment of any monies or the provision of any goods or services. The SAEDF agrees to provide the City with Quarterly Progress Reports that outline how the Economic Development Grant funds provided under this Agreement were utilized to accomplish the public

purpose for which this Agreement was entered into and summarizing completed and scheduled performance evaluations planned by the SAEDF as specified in **Article III**.

4.5 City may, in its sole discretion, terminate this Agreement and any Grant funds paid to SAEDF pursuant to this Agreement shall be immediately returned to City. If the City elects to rescind and terminate this agreement, the City shall provide at minimum 30 days notice to SAEDF.

ARTICLE V. RECORDS RETENTION

5.1 SAEDF shall properly, accurately and completely maintain all documents, papers, 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 the offices of SAEDF and with at least 48 hours’ notice as the 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.

5.2 SAEDF 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, SAEDF shall retain the records until the resolution of such litigation or other such questions. SAEDF 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 SAEDF to provide in electronic form of said documents to City prior to or at the conclusion of said retention.

5.3 SAEDF shall notify City, immediately, in the event SAEDF receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SAEDF understands and agrees that City will process and handle all such requests with an understanding that the SAEDF reserves the right to challenge any specific Open Records Request under the Texas Public Information Act made to SAEDF or the City.

ARTICLE VI. TERMINATION

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

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

6.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VII. 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:

- (1) The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article IX. Assignment and Subcontracting.
- (2) The unsatisfactory performance of the Director in accordance with this Agreement.
- (3) Bankruptcy or selling substantially all of company's assets.
- (4) Failing to perform or failing to comply with any covenant herein required.
- (5) Performing unsatisfactorily in accordance with this Agreement.

6.4 Defaults With Opportunity for Cure. Should SAEDF default in the performance of this Agreement in a manner stated in this Section 6.3 above, such default shall be deemed to be an event of default hereunder. City shall deliver written notice of said default specifying such matter(s) in default and the means of cure. SAEDF shall have sixty (60) calendar days after receipt of the written notice, in accordance with Section 7.1, to cure such default. If SAEDF fails to cure the default within such sixty-day (60) cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate. In the event the City terminates this Agreement in whole or in part, then the CITY shall have the right to recapture any Grant funds disbursed in accordance with this Agreement.

6.5 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.

6.6 Irrespective of how this Agreement is terminated, SAEDF 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, electronic copies of all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by SAEDF, or provided to **SAEDF**, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SAEDF in accordance with Article V. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at City's sole cost and expense. Payment of compensation due or to become due to SAEDF is conditioned upon delivery of all such documents, if requested.

6.7 Upon the effective date of expiration or termination of this Agreement, SAEDF shall cease all operations of work being performed by SAEDF or any of its subcontractors pursuant to this Agreement. Provided however, such work may be continued to be performed by SAEDF under any other agreement to which SAEDF may be a party to.

6.8 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 SAEDF for any default hereunder or other action.

ARTICLE VII. NOTICE

7.1 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
Economic Development Department
100 W. Houston, Floor 19
San Antonio, Texas 78205

If intended for SAEDF, to:

San Antonio Economic Development
Foundation (SAEDF)
Attn: Executive Director
602 E. Commerce Street
San Antonio, Texas 78205

ARTICLE VIII. INDEMNITY

8.1 SAEDF and City acknowledge that the City is a political subdivision of the State of Texas and that the City is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in 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. This Agreement will be interpreted according to the Constitution and laws of the State of Texas.

8.2 SAEDF covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, directly or indirectly arising

out of, resulting from or related to SAEDF'S activities under this AGREEMENT, including any acts or omissions, or willful misconduct, of SAEDF, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of SAEDF, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law. The CITY, and/or shall have the right, at their option and at their own expense, to participate in such defense without relieving SAEDF of any of its obligations.

SAEDF further agrees to reimburse the City for any costs or expenses, including court costs and reasonable attorney's fees, which City may incur in investigating, handling or litigating any such claims. IN THE EVENT SAEDF 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.

8.3 SAEDF SHALL ADVISE THE CITY, IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF THE SAEDF'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE SAEDF'S COST TO THE EXTENT REQUIRED UNDER THIS AGREEMENT.

8.4 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.

8.5 Nothing in this Agreement waives any governmental immunity available to the City under the laws of the State of Texas.

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

ARTICLE IX. ASSIGNMENT AND SUBCONTRACTING

9.1 SAEDF shall work with SA Works board of directors to employ the Director position in order to complete the work to be performed under this Agreement, and if this shall be considered in any way to be an assignment or subcontract, then such is approved by CITY in advance by execution of this agreement.

9.2 It is City's understanding and this Agreement is made in reliance thereon, that except where allowed in this Agreement SAEDF does not intend to use subcontractors in the performance of this Agreement.

9.3 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 SAEDF. City shall in no event be obligated to any third party, including any subcontractor of SAEDF, 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.

9.4 Except as otherwise stated herein, SAEDF 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 written consent of the Director of the Economic Development Department of the City of San Antonio. As a condition of such consent, if such consent is granted, SAEDF shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SAEDF, assignee, transferee or subcontractor.

9.5 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 SAEDF 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 SAEDF shall thereupon cease and terminate, in accordance with Article VI, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by SAEDF shall in no event release SAEDF from any obligation under the terms of this Agreement, nor shall it relieve or release SAEDF from the payment of any damages to City, which City sustains as a result of such violation.

ARTICLE X. INDEPENDENT CONTRACTOR

10.1 SAEDF covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that SAEDF 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 SAEDFs; that the doctrine of respondent superior shall not apply as between City and SAEDF, its officers, agents, employees, contractors, subcontractors and SAEDFs, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and SAEDF. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party, including, without limitation, by Director, occurring in connection with the services to be performed by the SAEDF under this Agreement and that the SAEDF has no authority to bind the City.

ARTICLE XI. NO REPRESENTATIONS

11.1 Neither SAEDF nor its agents or brokers have made any representations or promises with respect to their services except as may be expressly set forth in this Agreement,

and any reliance by City on any representations or promises of SAEDF, its agents or brokers shall be solely on the representations or promises, if any, expressly contained in this Agreement. City is not acquiring any rights, under this Agreement by implication or otherwise except as expressly set forth in this Agreement.

ARTICLE XII. CONFLICT OF INTEREST

12.1 SAEDF 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.

12.2 Pursuant to the subsection above, SAEDF 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. SAEDF 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 XIII. AMENDMENTS

13.1 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 XIV. SEVERABILITY

14.1 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.

ARTICLE XV. LICENSES/CERTIFICATIONS

15.1 SAEDF warrants and certifies that SAEDF 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.

ARTICLE XVI. COMPLIANCE

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

ARTICLE XVII. NONWAIVER OF PERFORMANCE

17.1 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 XV. 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.

ARTICLE XVIII. LAW APPLICABLE

18.1 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.

18.2 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.

ARTICLE XIX. LEGAL AUTHORITY

19.1 The signers of this Agreement for SAEDF and the City represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of SAEDF and the City and to bind SAEDF and the City to all of the terms, conditions, provisions and obligations herein contained.

ARTICLE XX. PARTIES BOUND

20.1 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.

ARTICLE XXI. NONDISCRIMINATION AND SECTARIAN ACTIVITY

21.1 SAEDF 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, national origin, religion, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

21.2 None of the performances rendered by SAEDF under this Agreement shall involve, and no portion of the Incentives received by SAEDF under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

21.3 SAEDF shall, to the best of its knowledge and belief, include the substance of this Article in all agreements entered into by SAEDF associated with the Grant funds made available through this Agreement.

ARTICLE XXII. PARTIES' REPRESENTATIONS

22.1 This Agreement has been jointly negotiated by the City and SAEDF and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXIII. RELATIONSHIP OF PARTIES

23.1 SAEDF is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint ventures or any other similar such relationship between the Parties. As between the CITY, and SAEDF, the SAEDF is solely responsible for compensation payable to any employee, contractor, or subcontractor of SAEDF, and none of the SAEDF's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City as a result of this Agreement. To the extent permitted by Texas law, no director, officer, employee or agent of the CITY shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XXIV. CAPTIONS

24.1 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.

ARTICLE XXV. ENTIRE AGREEMENT

25.1 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 the same is in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIII.

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

CITY OF SAN ANTONIO

**SAN ANTONIO ECONOMIC
DEVELOPMENT FOUNDATION**

Sheryl Sculley
City Manager or designee

Tom Long
Executive Vice President

ATTEST/SEAL:

Leticia M. Vacek
City Clerk

Approved as to Form:

Martha G. Sepeda, Acting City Attorney