

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. 2018-09-____-____ passed and approved on September ____, 2018 (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, 2018 through September 30, 2019.

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. 2018-09-____-_____, passed and approved on September ____, 2018, 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 On or before September 30, 2018, 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 is 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.

XXIII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

23.01 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

23.02 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

23.03 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

23.04 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXIV. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

Signatures appear on next page.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL
FORCE AND EFFECT OF AN ORIGINAL, THIS THE _____ DAY OF
_____, 2018.

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

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 2018-2019”, dated June 27, 2018, 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 2018-2019”.** CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City’s Office of Sustainability Director and no officer or employee shall have authority to waive this requirement.
- 13.4 CITY reserves the right to review the insurance requirements of this Contract during the effective period of this Contract and any extension or renewal hereof, if any, and to require modification of insurance coverage and its limits when deemed necessary and prudent by the City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.
- 13.5 CONSULTANT’s financial integrity is of interest to CITY, therefore, subject to CONSULTANT’s right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at CONSULTANT’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

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

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

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

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

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

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

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

13.9 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the CONTRACT; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT

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

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

XIV. INDEMNITY

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

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

XV. AMENDMENT

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

XVI. NOTICE

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

CITY

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

CONSULTANT

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

XVII. LEGAL AUTHORITY

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

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

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

XIX. SUCCESSORS AND ASSIGNS

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

xx. NONWAIVER OF PERFORMANCE

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

xxi. COMPLIANCE

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

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

XXII. VENUE AND GOVERNING LAW

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

XXIII. SEVERABILITY

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

XXIV. GENDER

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

XXV. CAPTIONS

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

XXVI. ENTIRE AGREEMENT

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

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.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

[Signatures on the next page]

EXECUTED this the _____ day of October, 2018.

CITY

City of San Antonio, Texas

CONSULTANT

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

Roderick Sanchez,
Assistant City Manager
Office of the City Manager

Maria Garcia, Vice-Chair
Build San Antonio Green

APPROVED AS TO FORM:

Andy Segovia
City Attorney

By: Assistant City Attorney

EXHIBIT “A”

June 27, 2018

Build San Antonio Green[®]
City of San Antonio Scope of Work Funding Request for FY2018 - 2019

June 27, 2018

**Build San Antonio Green®
City of San Antonio Scope of Work
Funding Request for FY2018 - 2019**

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.

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 **6,422 green projects** under our program to date, including **6,355 single family new construction homes, 58 single family retrofit projects, and 8 multifamily projects, and 1 Mixed Use Project.** This has resulted in the **prevention of more than 162 Million pounds of CO₂ to date,** the equivalent of taking 13,529 cars off of the road for one year. In addition, the certified homes **have resulted in more than 10.9 megawatts of peak demand energy reduction.**

BSAG FY 2018-2019 Request for Funding

For the 2018-2019 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 2015, 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 starting in 2017. 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 SPARC party and Solar Fest.

BSAG requests funding from the City of San Antonio to include in the BSAG FY 2018-2019 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 6000 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 100 affordable homes: homes that cost \$110,000 or less. BSAG services will enhance current City housing programming like the Green and Healthy Homes Initiative 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 increase.

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. These Workshops may also relate to the broader BSAG activities as they related to City initiatives like the SA 2020 and SA Tomorrow Plans. 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.

Workshops:

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

Deliverable(s):

- Four(4) workshops

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 2019 SA Tomorrow Sustainability Awards

Build San Antonio Green works with our Partners to plan and administer the 2018 COSA SA Tomorrow Sustainability Awards (previously known as the Green Building Awards). These awards are an important service offered by the City of San Antonio to recognize noteworthy projects, programs, leaders, and innovations in the fields of green building, solar technology, and sustainability.

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 of submissions for nomination.

Population Served: As of 2017 the ceremony for this event will now be held as part of a special session of City Council as this increases the visibility of the awards and winners and adds weight to the ceremony. As the categories include all types of residential and commercial construction, solar, industry leaders, and programs across the city, the

population served changes depending on the winners selected each year but has a very broad and comprehensive scope aimed at the entire city population.

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 continue to increase both of these numbers in 2019.

Population Served: Solar Fest serves the community at large. Based on the previous 4 years average attendance is between 6,000-8,000 people and vendors average about 75+. Because attendees do not purchase tickets we do not have specific demographic data at this time, however, the event is free to the public and family friendly to be as equitable and accessible as possible.

Deliverable(s):

- Solar Fest Event

7.) 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 continue to update 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 designed to be a free, un-biased decision tool for the public. It serves as 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 and so much more. Our ongoing updates have now also included a platform to better educate interested solar candidates with a new layout including "Learn," "Decide," and "Apply."

We work with CPS Energy, local solar installers, and financial institutions to simplify the process of "going solar." We hope to promote the wide adoption of solar 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 for as close to 200 Families as possible.

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 2018-2019	
Task 1: Certifications through BSAG®	Budgeted
Deliverables	
1. Projects certified through BSAG® (500)	\$46,820.93
	\$46,820.93
Task 2: Develop & Host Green Open House Events f/BSAG Cert Homes	
Deliverables	
2. Hold "Green Open House" Events (2)	\$4,216.46
	\$4,216.46
Task 3: Community Education	
Deliverables	
1. Workshop series (4)	\$4,004.00
	\$4,004.00
Task 4: Outreach Events	
Deliverables	
1. City of San Antonio Historic Homeowners Fair - August	\$500.87
2. COSA's Earth Day Celebration - April	\$500.87
	\$1001.75
Task 5: Plan & Administer Annual Green Building Awards	
Deliverables	
1. Selection of Nomination Committee	\$144.00
2. Update & Refine Award Criteria/Assist in Judge Selection	\$144.00
3. Coordinate & Manage Event Planning/Ceremony Operations	\$2603.92
4. Awards & Event Promotion	\$2108.52
	\$5,000.44
Task 6: Solar Fest	
Deliverables	
1. Execution of the Event	\$16,641.79
	\$16,641.79
Task 7: Bring Solar Home	
Deliverables	\$7314.63
1. Administration of Bring Solar Home Program and Website	\$7,314.63
	\$85,000.00

STATE OF TEXAS § FUNDING AGREEMENT
§ WITH
COUNTY OF BEXAR § SAN ANTONIO ZOOLOGICAL SOCIETY

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and San Antonio Zoological Society (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation. GRANTEE and CITY shall collectively be referred to as "the Parties."

PREAMBLE

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

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

1.1 This Agreement shall commence October 1, 2018 and terminate September 30, 2019, unless terminated sooner according to the terms herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.1 GRANTEE shall provide the services as outlined in the attached Exhibit A – Scope of Services.

III. FUNDING BY CITY

3.1 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 related to Exhibit A – Scope of Services. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$306,597.00.

IV. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

4.2 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.
- b) That GRANTEE'S record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

4.3 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.

4.4 Disbursement of funds shall be based upon invoices submitted by GRANTEE. Invoices shall be submitted no more than monthly and no less than twice per year. Subsequent to disbursement, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.5 If necessary, GRANTEE may request an advance payment to partially offset GRANTEE'S expenses associated with the services outlined in Exhibit A – Scope of Services. If advance payments are requested, GRANTEE shall provide an advance payment request. Prior to the next payment request, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.6 Eligible expenses 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.

4.7 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.

4.8 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.

4.9 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out herein 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.

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

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.1 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, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors.

5.2 Grantee agrees to comply with any and all Small Business Economic Development Advocacy (SBEDA) goals assigned to this Agreement.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- a) All information, data or reports heretofore or hereafter provided to CITY in regards to this Agreement 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 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 affect its obligations hereunder.
- c) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE that impact performance under this Agreement.
- 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.

VII. ACCESSIBILITY OF RECORDS

7.1 At any time during normal business hours and as so often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all relevant 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.

7.2 GRANTEE agrees and represents that it will reasonably 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.

VIII. MONITORING AND EVALUATION

8.1 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.

IX. INSURANCE

9.1 GRANTEE shall be responsible for insuring their own Property, Equipment, Autos and Legal Liability, In no event shall the CITY be required to maintain any insurance coverage for the GRANTEE or held liable for the actions or injuries whether it be property or bodily as result caused by the contracted. In no way is the CITY liable for any monies given or to be held responsible for anything the monies are used for.

X. INDEMNIFICATION

10.1 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.

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. 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.

XI. NON-DISCRIMINATION

11.1 As 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 exempt by state or federal law, or as otherwise established herein.

XII. POLITICAL ACTIVITY

12.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, of 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.

XIII. CONTRACTING

13.1 Compliance by contractor 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.

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

XIV. CHANGES AND AMENDMENTS

14.1 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.

14.2 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 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.

XV. ASSIGNMENTS

15.1 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, an interest in and to same, or any claim arising thereunder, without first procuring the written approve of CITY. Any attempt to transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XVI. SEVERABILITY OF PROVISIONS

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 constructed as if such invalid, illegal or unenforceable clause or provisions 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.

XVII. DEFAULT

17.1 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.

17.2 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.

XVIII. NON-WAIVER OF PERFORMANCE

18.1 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be constructed 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 option herein contained, shall in no event be constructed as a waiver or relinquishment for the future or 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.

18.2 No act or omission of either part 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.

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

XIX. ENTIRE AGREEMENT

19.1 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 date hereof and duly executed by the Parties.

XX. NOTICES

20.1 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 OF SAN ANTONIO:

Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283-3966

GRANTEE:

San Antonio Zoological Society
Attn: CEO/ Executive Director
3903 N. St. Mary's Street
San Antonio, TX 78212

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, successors and assigns, except as otherwise expressly provided herein.

XXII. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or constructed 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 thereto.

XXIII. TEXAS LAW TO APPLY

23.1 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.

XXIV. GENDER

24.1 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.

XXV. CAPTIONS

25.1 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.

XXVI. LEGAL AUTHORITY

22.1 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 and 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2018.

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

SAN ANTONIO ZOOLOGICAL SOCIETY

By: _____
Xavier D. Urrutia, Director

By: _____
Tim Morrow, CEO/Executive Director

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Scope of Work and Budget (to be negotiated)

FY 2019 ARTS & CULTURAL AGENCY FUNDING
Funding by Agency Category
FY 2019 Adopted Budget

Program/Agency Name	Adopted FY 2019
FESTIVALS	
Anuja San Antonio	\$11,563
Cactus Pear Music Festival	48,000
Luminaria	262,500
Sociedad Herencia Puertorriqueña	3,000
Texas International Folk Dancers	6,875
Total Festivals	\$331,938
ARTIST REGRANTING	
National Association of Latino Arts and Culture	\$40,000
San Antonio Artist Foundation	40,000
Total Artist Regranting	\$80,000
CULTURALLY SPECIFIC	
Conjunto Heritage Taller	\$28,500
San Anto Cultural Arts	123,576
Centro Cultural Aztlan	160,594
American Indians in Texas at the Colonial Missions	77,250
Urban-15	177,000
Esperanza Peace and Justice Center	371,142
Guadalupe Cultural Arts Center	437,342
Total Culturally Specific	\$1,375,404
BASE OPERATIONAL FUNDING	
Alamo City Opera Piccola	\$46,250
Artpace, Inc.	336,875
ARTS San Antonio	296,250
Ballet San Antonio	101,250
Bihl Haus Arts Inc.	112,500
Chamber Orchestra of SA / CMI	26,250
Children's Chorus of SA	112,507
Contemporary Art for SA (Blue Star)	221,254
Dreams Fulfilled Through Music	17,500
Gemini Ink	132,261
Inspire Community Fine Art	51,250
Jump Start Performance	52,395
Musical Bridges Around the World, Inc.	98,750
National Western Art Foundation (Briscoe)	100,000
SA Chamber Choir	14,375
SA Children's Museum (The DoSeum)	200,000
SA Choral Society	16,875
SA Metropolitan Ballet	50,000
SA Museum of Art	347,000
San Antonio Art League	5,487

FY 2019 ARTS & CULTURAL AGENCY FUNDING
Funding by Agency Category
FY 2019 Adopted Budget

Program/Agency Name	Adopted FY 2019
BASE OPERATIONAL FUNDING (CONTINUED)	
San Antonio Brass	1,785
San Antonio Little Theater (The Public Theater of SA)	189,375
Say Sí	239,605
SOLI Chamber Ensemble	21,250
Southwest School of Art	321,000
Symphony Society of SA	460,500
The Classic Theatre of SA	37,500
The Magik Theatre	271,700
The Network of Young Artists	47,500
The Opera of SA	156,250
Witte Museum	495,998
Woodlawn Theater	112,500
Youth Orchestras of SA	227,500
Total Base Operational Funding	\$4,921,492
ADDITIONAL ARTS FUNDING ALLOCATIONS	
Centro de Artes	\$150,000
San Antonio Public Library Foundation Book Festival	50,000
Cultural Plan	75,000
Capacity Building	75,000
Sister Cities	100,000
Total Additional Arts Funding Allocations	\$450,000
Total FY 2019 Arts & Cultural Agencies Allocations	\$7,158,834

CITY OF SAN ANTONIO * AGENCY NAME

II. TERM

- 2.1 Except as otherwise provided for pursuant to its provisions, this Contract shall begin on **October 1, 2018** and shall terminate on **September 30, 2019**.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. The receipt of funds under this Contract does not guarantee Contractor funds in subsequent fiscal years.
- 2.3 Contractor understands that City will not disburse initial funds under this Contract until Contractor has submitted final report with metrics, 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 of contract obligations, under this Contract, City will pay Contractor for expenses incurred in accordance with the Allowable Costs that are identified as part of **Attachment I** to this Contract. It is specifically agreed that payment shall not exceed \$.00.
- 3.2 The funding level of this Contract is based on the allocation awarded to Department by the City of San Antonio. The allocation is based on an appropriation for the **Operational Support** and Department receipt of said allocation. The budget(s) to this Contract may be adjusted to correspond to the actual allocation awarded. 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 City of San Antonio City Council-approved Arts Funding Guidelines.
- 3.3 Contractor understands and agrees that this is a contract to provide operational support for FY19, based on formulaic calculations and priorities outlined in the Arts Agency Funding Guidelines and available funding. Investments are made based on a percentage of the Contractor's three-year

average of net operating expenses from Contractor's 990 filing at the beginning of the application three-year cycle. Contractor further agrees to adhere to all requirements outlined in the Arts Agency Funding Guidelines.

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 City's liability under this Contract is limited to making payments 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 this Contract and as further defined in accordance with **Attachment I**. Funding provided under this Contract may be used for any or all of the Allowable Costs set forth in **Attachment I** and all requested payments must be consistent with the terms and provisions described in **Attachment I** of this Contract. In no event shall City be liable for any cost of Contractor not eligible for payment as defined within the Contract.

(B) All funds received under this Contract shall be subject to the following payment schedule ("Disbursement Schedule"):

October - Initial disbursement of 30% upon completion of Contractor's FY2017 Cultural Data Profile by September 30, and receipt of all required documents, as identified in **Attachment II**, which is attached and incorporated for all purposes, and an invoice by the 10th of the month.

January – Second disbursement of 30% upon submission of Q1 Artistic Activity Report and a Detailed Listing of Expenditures to account for Q1, utilizing the forms in **Attachment III**, which is attached and incorporated for all purposes, support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures to date, and an invoice by the 10th of the month.

April – Third disbursement of 20% upon submission of Q2 Artistic Activity Report and a Detailed Listing of Expenditures to account for Q1, utilizing the forms in **Attachment III**, which is attached and incorporated for all purposes, support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures claimed since last disbursement, and an invoice by the 10th of the month.

July – Fourth disbursement of 10% upon submission of Q3 Artistic Activity Report and a Detailed Listing of Expenditures to account for Q2, utilizing the forms in **Attachment III**, which is attached and incorporated for all purposes, support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures claimed since last disbursement, and an invoice by the 10th of the month. Agencies whose season has already ended may apply for 30% if submitting all closeout documents.

Final disbursement of 10% upon closeout of Contract, due no later than the 10th of October, which includes, but is not limited to: 1) submission of Q4 Artistic Activity Report and, 2) receipt of support materials (including copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses) for all expenditures claimed since last disbursement, and 3) an invoice.

(C) City shall pay such invoices within fifteen (15) business days, subject to the receipt of the required documents and support materials set forth in this Agreement.

(D) If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to filing Cultural Data Profiles, invoicing, and submitting Artistic Activity Reports and any and all documents related to the Contract, as determined by the sole discretion of the Executive Director of Department, funds not yet received under this Contract shall convert to a reimbursement schedule, as determined by the Executive Director of Department, according to standard procedures followed by City's Finance Department.

- 4.3 The City Manager, Assistant City Manager or the Executive Director of Department 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; such changes shall not necessitate an amendment to this Contract.

- 4.4 Contractor agrees that all requests for disbursement shall be accompanied with documentation as may be required by the Executive Director of Department.
- 4.5 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.6 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 disbursement of funds from City and the expenditure 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 Allowable Cost 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.

4.7 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 Department to exceed such limit. Such requests for petty cash must be supported by the submission to Department 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.

4.8 Contractor agrees that Contractor costs claimed under this Contract will not be claimed under another contract or grant from another agency or City Department, and Contractor warrants that each invoice submitted for

payment does not include any costs paid for by another funding source or submitted for payment to any other funding source.

- 4.9 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.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds.

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 under this Contract. 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 Department, through the Artistic Activity Report, notice of activity that generates program income. Contractor shall provide detail in the Artistic Activity Report of the type of activity, time, place and City Council district of all activities, number of attendees, number of volunteers, admission fee(s) 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 Under the provisions and of this Contract, 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 Sections 5.1 through 5.4, in their 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 pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager or Executive Director of Department, as representative of City, shall have the final authority to render or secure an interpretation. Said interpretation shall become the final governing authority to dispute resolution and shall be appropriately conveyed to the Parties.

VII. AUDIT

- 7.1 (A) If Contractor expends \$250,000.00 or more of City dollars, then during the term of this Contract, Contractor is required to complete 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 Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. 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. If applicable, Contractor's failure to comply with Section 7.1(a) may result in the loss of funding in future years.

(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. If applicable, Contractor's failure to comply with Section 7.1(b) may result in the loss of funding in future years.

(C) The audited financial statement(s) must include a schedule of receipts and disbursements consistent with the Allowable Cost categories 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, and said reviews and/or audits 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 Department 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 review 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 paid 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, Department may, instead, deduct such claims from subsequent payments; 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 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. If Department elects to deduct such claims from subsequent payments, 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.

- 7.6 Contractor shall input all information required by City into City's required reporting software system.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by Department, Contractor shall furnish to Department, if applicable, such statements, records, data, and applicable information and documents. 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 Department such reports as may be required by City, including the Artistic Activity Report and Detailed Listing of Expenditures **as set forth in Attachment II**, in a form directed by City. Said Artistic Activity Reports are to be submitted to Department no later than the 10th day of January, April, July, and upon closeout. Additionally, Contractor shall complete a Cultural Data Profile for its FY18 which is due on or before May 31, 2019.
- 8.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 8.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Contractor acknowledges and agrees that all local government records, as described in this Contract, 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 Department, unless required to do so by a court of competent jurisdiction. Under said circumstances, the Executive Director for Department shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

- 8.5 City and Contractor agree that should City wish to obtain a license to use the Project 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.
- 8.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City.
- 8.7 Prior to execution of Contract document, Contractor shall provide to Department all information requested by Department 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 Contractor's board will become part of Contractor's Project records; and shall be submitted within ten (10) days after board approval.
- (E) Board Agenda, must be submitted at least five (5) business days prior to each Board meeting.

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

IX. INSURANCE

- 9.1 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 with an original copy mailed to the Department of Arts and Culture and emailed to assigned Contract Officer. 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.
- 9.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Contract, and any extension or renewal, 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.
- 9.3 A contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension or renewal, at Contractor's sole expense, insurance coverage written on an occurrence

basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

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

- 9.4 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 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 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
 Department of Arts and Culture
 ATTENTION: Contract Manager

203 S St. Mary's St. Suite 120
San Antonio, Texas 78205

- 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 required provisions:
- Name 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 City
 - Provide for an endorsement that the “other insurance” clause shall not apply to City where 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.
- 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, or terminate the remaining terms of this contract, 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.
- 9.7 In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Contractor to stop work, and/or withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with such requirements.
- 9.8 Nothing contained in this Contract 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.

- 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 City of San Antonio for liability arising out of operations under this Contract.
- 9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 9.11 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, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT 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 and not intended to create or grant any rights,**

contractual or otherwise, to any other person or entity.

- 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 CONTRACT.**
- 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 Contract. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.**
- 10.5 Employee Litigation – In any and all claims against any party indemnified 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 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 City of San Antonio *Non-Discrimination Policy* 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 in this Contract. 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 Department upon written request form 990, 990N or 990T.

- 11.4 The following provisions shall only apply to Contractor in the event that it meets the definition of Company found below:

Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Contract. City relies on Contractor's verification. If found to be false, City may terminate this Contract for material breach, without providing the opportunity to cure.

11.5 It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of ***employment discrimination, harassment and sexual harassment***. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute ***employment discrimination, harassment, or sexual harassment***, is prohibited. ***Harassment and sexual harassment*** are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged ***employment discrimination, harassment, or sexual harassment*** or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Contractor shall comply with this policy in all interactions with Contractor's employees and subcontractors, if any, under this Contract.

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 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

12.6 Contractor warrants and certifies as follows:

- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
- (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

12.7 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

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 have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date (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 effective date, 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 effective date, 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 in this Contract or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges 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 payments 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 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 Contract, 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;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel, paid out of City funds, with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to Department. Contractor shall list the name and

number of a contact person from Department on the statement that Contractor's personnel can call to report said violations.

- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, payments to 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 Contract. Said key employees are defined as Executive Director, Artistic Director, Program Manager, Administrator, Chief Financial Officer (CFO), and Chief Executive Officer (CEO).
- 15.2 Contractor shall provide City with its hours of operation no later than October 31, 2017. 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 (part-time is defined as one who works at least 20 hours per week and 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 payments 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 within the organization.
- 15.8 Upon request, the Contractor agrees to provide City with the names and licensed registration(s), if applicable, 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 Department, Contractor may be paid 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; and
 - (D) To attend seminars or workshops relevant to supporting or improving organization's overall operational performance.
- 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, ("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 annual employee appraisals which shall be made available to City upon request.

15.12 Contractor's primary and secondary contacts for this Contract are:

Name, Title

Name, Title

Such individuals 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 GetCreativeSanAntonio logo as provided by the Department. 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 payment 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.

XVIII. SPECIAL PROVISIONS

- 18.1 Indecency. The following is City's policy statement regarding material and/or performances funded under Department'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 Department 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 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 under this Contract shall involve, and no portion of the funds received 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 of this Contract 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 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 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**, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I**;
 - (C) modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of Department;
 - (D) adjustments to the funding awarded under this Contract in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and

regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 21.1(a) above; and

- (E) any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 21.1(A) and (D) above.
- 21.2 Any amendments to the Performance Plan must be made at least fifteen (15) days prior to any event being added to this Contract by such amendment.

XXII. SUBCONTRACTING

- 22.1 Any work or services subcontracted under this Contract 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 Contract. Compliance by subcontractors with this Contract 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 & Culture
Attention: Contract Manager
203 S. St. Mary's St. Ste. 120
San Antonio, Texas 78205**

Contractor:

Name, Title
Organization Name
Street address
San Antonio, TX 782__

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 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 Department 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 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 in this Contract shall be deemed or construed by the Parties 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.
- 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 that such invalidity, illegality or unenforceability shall not affect any other clause or provision and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained; it is also the intention of the Parties 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. [This section is intentionally left blank]

XXX. ENTIRE CONTRACT

- 30.1 This Contract and its attachments constitute the entire and integrated Contract between the Parties 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:

CONTRACTOR:

Debbie Racca-Sittre
Executive Director
Department of Arts and Culture

Name
Title
Organization Name
Street address
San Antonio, TX, 782__

Approved as to Form:

Board President:

City Attorney

(If required by Contractor)

ARTIST RE-GRANTING AGREEMENT

CONTRACT NO.

STATE OF TEXAS *

COUNTY OF BEXAR *

ARTS AGENCY CONTRACT WITH
AGENCY NAME

CITY OF SAN ANTONIO *

This Contract is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through the City of San Antonio, Department of Arts and Culture, ("Department"), pursuant to Ordinance No. dated September , 2018 and the Agency Name ("Contractor")

WITNESSETH:

WHEREAS, the Department of Arts and Culture is designated as the managing City department ("Department") for the City; and

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

WHEREAS, City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project(s) entitled **Artist Re-Granting and Technical Assistance Support** ("the Project"); and

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

The parties hereto agree as follows:

I. SCOPE OF WORK

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

Artist Re-Granting and Technical Assistance Support	Attachment I
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II. TERM

- 2.1 Except as otherwise provided for pursuant to its provisions, this Contract shall begin on **October 1, 2018** and shall terminate on **December 31, 2020**.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII, or may be extended by written agreement executed by Contractor and the Executive Director of Department.

III. CONSIDERATION

- 3.1 In consideration of contract obligations, under this Contract, City will pay Contractor for expenses incurred in accordance with the Allowable Costs that are identified as part of **Attachment I** to this Contract. It is specifically agreed that payment shall not exceed \$.00.
- 3.2 The funding level of this Contract is based on the allocation awarded to Department by the City of San Antonio. The allocation is based on an appropriation for the **Artist Re-Granting and Technical Assistance Support** and Department'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

ARTIST RE-GRANTING AGREEMENT

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 Artist Re-Granting and Technical Assistance Support for FY19, as outlined in the Arts Agency Funding Guidelines. Contractor further agrees to adhere to all requirements outlined in the Arts Agency Funding Guidelines.

IV. PAYMENT

- 4.1 Prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall be financially stable and operate in a fiscally responsible and prudent manner, as determined at the sole discretion of City. Contractor shall provide any records requested by City that City deems necessary to make such a determination.
- 4.2 Contractor agrees that payment is contingent upon:
- (a) Verification that Contractor's funding process is open and accessible;
 - (b) A definable review and selection process of professional artists must be presented that is fair and equitable;
 - (c) Funding in the amount of \$30,000 must be used to re-grant to San Antonio professional artists for expenses related to the creation of new works and said work must be publicly displayed/performed in the city of San Antonio. Funding in the amount of \$10,000 must be used to provide training and technical assistance to artists who need assistance with education, conferences, travel and travel related expenses;
 - (d) Upon satisfaction of, but not limited to, meeting the above requirements, City will pay up to the amount specified in Section 3.1. Contractor is able to utilize up to 20% for administrative purposes in overseeing the grant funding and compliance.
- 4.3 Contractor shall provide City with a copy of its Program Statement describing the Project, its policies and procedures regarding the regranting process and a timeline illustrating the projected dates of the awards funded under this Contract and the implementation of the resultant works and such documentation shall be attached to this Contract and the implementation of the resultant works and such documentation shall be attached to this Contract and incorporated as Attachment I.
- 4.4 All funds received under this Contract shall be subject to the following payment schedule ("Disbursement Schedule"):

Upon final execution	Upon completion of Regranting Process
50%	50 %

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Contractor must provide support documentation for the initial payment before receiving the final payment.
- (3) Upon the selection of the artists to receive regranting through this Contract, Contractor shall provide City with report detailing the Contractor's funding process, a list of all applicants with their respective scores, a list of selected artists, a description of their project/event/performance/etc. and the total amount allocated to the selected artist. **The selection of such artists shall be completed and the City's notification shall be received no later than December 31, 2020, and in conjunction with submission of all final required documents.**
- (4) Once the work of the regranting artist funded through this Contract is completed, Contractor shall send City a final report detailing the final deliverable, total budget cost, and the location

ARTIST RE-GRANTING AGREEMENT

and date at which it will be available for public view. **All work and final report must be completed by December 31, 2020.**

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

ARTIST RE-GRANTING AGREEMENT

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects.

4.11 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 Department to exceed such limit. Such requests for petty cash must be supported by the submission to Department 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.

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

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

4.14 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 Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

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

V. ADMINISTRATION OF CONTRACT

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

VI. AUDIT

6.1 (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 Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. 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.

ARTIST RE-GRANTING AGREEMENT

(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.

6.2 Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to Department within ten (10) days of Contractor's receipt of the report.

6.3 City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. City audit staff, a Certified Public Accounting firm, or other auditors as designated by City, may perform such audit(s). City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

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

6.4 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.

6.5 When an audit or examination determines that Contractor has expended funds or incurred costs which are questioned by City and/or the applicable state or federal governing agency, Contractor shall be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been paid 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, Department may instead deduct such claims from subsequent payments; 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 cashier's check or money order. If Department elects to deduct such claims from subsequent payments, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

ARTIST RE-GRANTING AGREEMENT

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

VII. RECORDS, REPORTING, AND COPYRIGHTS

- 7.1 Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by Department, Contractor shall furnish to Department, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 7.2 Contractor shall submit to Department an accomplished milestone report including but not limited to, an Artistic Activity Report and any other reports as may be required by City. Said report is to be submitted to Department no later than the 10th day of each of the following months: January, April, July, and October. An Artistic Activity Report shall be required with or without achieved activities during the prior reporting period. Contractor further agrees to submit a Cultural Data Profile for their FY17 no later than September 30, 2018; and a Cultural Data Profile for their FY18 no later than May 31, 2019.
- 7.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 7.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003(8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Executive Director of Department, unless required to do so by a court of competent jurisdiction. Department shall be notified of such request as set forth in Article VIII., Section 7.3 of this Contract.
- 7.5 City and Contractor agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Contractor agrees to execute all documents reasonably requested by City to enable City to utilize all such property. In the event a third party owns the intellectual property rights, Contractor shall assist City in obtaining a license to use said intellectual properties.
- 7.6 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final fiscal reports and all required deliverables to City.
- 7.7 Contractor shall provide to Department all information requested by Department relating to the Contractor's Board functions. Information required for submission shall include, but may not be limited to:

ARTIST RE-GRANTING AGREEMENT

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

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

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

7.8 Contractor shall input all information required by City into City's required reporting software system.

7.9 If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to filing a Cultural Data Profiles, invoicing, and submitting Artistic Activity Reports and any and all documents related to the Contract, as determined by the sole discretion of the Executive Director of Department, funds not yet received under this Contract shall convert to a reimbursement schedule, as determined by the Executive Director of Department, according to standard procedures followed by City's Finance Department.

VIII. INSURANCE

- 8.1 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 "**Artist Re-Granting and Technical Assistance Support**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number and be mailed with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City's Department of Arts and Culture. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 8.2 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.
- 8.3 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 Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent

ARTIST RE-GRANTING AGREEMENT

b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	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

- 8.4 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

- 8.5 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.
- 8.6 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 Contract. Contractor’s failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- 8.7 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.
- 8.8 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 Contract.

ARTIST RE-GRANTING AGREEMENT

- 8.9 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 Contract.
- 8.10 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.
- 8.11 Contractor and its subcontractors are responsible for all damage to their own equipment and/or property.

IX. INDEMNITY

- 9.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, property damage and intellectual property right infringement made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 9.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 9.3 **CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.**
- 9.4 **Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also**

ARTIST RE-GRANTING AGREEMENT

have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

X. APPLICABLE LAWS

- 10.1 All of the work performed under this Contract by Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:
- worker's compensation;
 - unemployment insurance;
 - timely deposits of payroll deductions;
 - Occupational Safety and Health Act regulations;
 - Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
 - American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
 - City of San Antonio and Bexar County charter, ordinances and bond ordinances.
- 10.2 **Non-Discrimination.** As a party to this contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.
- 10.3 Contractor warrants that all taxes, which Contractor may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes if applicable the filing of:
- Information on Tax Return form 990, 990N or 990T,
 - Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and
 - Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.
- Contractor shall also maintain and submit to Department upon written request form 990, 990N or 990T.
- 10.4 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html> and any amendments thereto, as well as Texas Local Government Code Chapter 252 pertaining to Purchasing and Contracting Authority of Municipalities and Chapter 2254 pertaining to Professional and Consulting Services which can both be found at <http://www.capitol.state.tx.us/statutes/go0055200toc.html>
- 10.5 Contractor understands that certain funds provided pursuant to this Contract have been made available by City and/or by Federal, State, or other granting entities. Consequently, Contractor must comply with all laws, rules, regulations, policies, and procedures applicable to those specific funds. For example, CDBG

ARTIST RE-GRANTING AGREEMENT

Contractors are required to follow applicable CDBG regulations. In addition, Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable:

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

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

10.7 The following provisions shall only apply to Contractor in the event that it meets the definition of Company found below:

Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Agreement. City relies on Contractor's verification. If found to be false, City may terminate this Agreement for material breach, without providing the opportunity to cure.

10.06 It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of **employment discrimination, harassment and sexual harassment**. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute **employment discrimination, harassment, or sexual harassment**, is prohibited. **Harassment and sexual harassment** are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged **employment discrimination, harassment, or sexual harassment** or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Contractor shall comply with this policy in all interactions with Contractor's employees and subcontractors, if any, under this Contract.

ARTIST RE-GRANTING AGREEMENT

XI. NO SOLICITATION/CONFLICT OF INTEREST

- 11.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 11.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 11.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 11.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
 - (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 11.5 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
- 11.6 Contractor warrants and certifies as follows:
- (i) Contractor and its officers, employees and agents are neither officers nor employees of City.
 - (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 11.7 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

ARTIST RE-GRANTING AGREEMENT

XII. TERMINATION

- 12.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall thereupon have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 12.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 12.3 Notwithstanding any other remedy contained herein or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of City, Contractor may be placed on probation during which time City may withhold payments 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.
- 12.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to City any remaining funds received from City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 6.5 of this Contract. The obligations of Contractor to return such funds to City in accordance with this Section, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XIII. PROHIBITION OF POLITICAL ACTIVITIES

- 13.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 13.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

ARTIST RE-GRANTING AGREEMENT

- 13.3 The prohibitions set forth in Article XIV., Sections 13.1 and 13.2 of this Contract include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 13.4 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 Department. Contractor shall list the name and number of a contact person from Department on the statement that Contractor's personnel can call to report said violations.
- 13.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, payments to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.
- 13.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XIV. CONTACT

- 14.1 Contractor's primary contact and secondary contacts for this Contract will be identified upon contract negotiation and herein will have the ability to access agency files in order to function seamlessly during the course of business with the City. Contractor shall notify the City upon any change in contact information within 5 business days of the change.

XV. ADVERSARIAL PROCEEDINGS

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

ARTIST RE-GRANTING AGREEMENT

XVI. CITY-SUPPORTED PROJECT

- 16.1 Contractor shall identify all events and activities funded in whole or in part by City by stating that the Project is “supported by the City of San Antonio’s Department of Arts and Culture” and by utilizing the official Department logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 16.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.
- 16.3 Contractor shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 16.4 If Contractor identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for payment by City.
- 16.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 16.6 All city-supported events must take place within the City of San Antonio city limits.
- 16.7 Specific to this funding category, Contractor must have in place a funding process that is open and accessible.
- 16.8 The re-granting of City funds cannot be made to artists who do not have a permanent residence (minimum of 6 months) within the city limits of San Antonio.
- 16.9 Artist’s projects or works used with a primarily fund-raising focus are ineligible.
- 16.10 The re-granting of City funds cannot be used for political purpose or against a political candidate, ballot measure or bill.

XVII. SPECIAL PROVISIONS

- 17.1 Indecency. The following is City’s policy statement regarding material and/or performances funded under Department’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 17.1(b).
 - (B) Contractor must make Department 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.

ARTIST RE-GRANTING AGREEMENT

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

XVIII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XIX. ASSIGNMENT

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

XX. AMENDMENT

- 20.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Executive Director of 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 in the following circumstances:

ARTIST RE-GRANTING AGREEMENT

- (A) an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
- (B) modifications to the Performance Plan set forth in **Attachment I** hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I** hereto;
- (C) modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of Department;
- (D) adjustments to the funding awarded under this Agreement in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 20.1(a) above; and
- (E) any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 20.1(A) and (D) above.

XXI. OFFICIAL COMMUNICATIONS

- 21.1 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
203 S St. Mary's St. Ste 120
San Antonio, Texas 78205

Contractor:
Executive Director Name
Organization Name
Street Address
San Antonio, Texas 782__

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.

XXII. VENUE

- 22.1 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.

XXIII. GENDER

- 23.1 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.

XXIV. AUTHORITY

ARTIST RE-GRANTING AGREEMENT

- 24.1 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 Department verification of the foregoing requirements no later than the execution date of this Contract.

XXV. INDEPENDENT CONTRACTOR

- 25.1 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.
- 25.2 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.
- 25.3 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.

XXVI. SEVERABILITY

- 26.1 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.

XXVII. CONTRIBUTION PROHIBITIONS

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

XXVIII. ENTIRE CONTRACT

ARTIST RE-GRANTING AGREEMENT

28.1 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:

Debbie Racca-Sittre
Executive Director
Department of Arts and Culture

CONTRACTOR
Name
Executive Director
Organization Name

APPROVED BY:

APPROVED BY:

APPROVED AS TO FORM: _____

City Attorney's Office

ATTACHMENTS

Attachment I. – Program Statement, Performance Plan & Allowable Costs

CONTRACT NUMBER [REDACTED]

STATE OF TEXAS *

COUNTY OF BEXAR *

CITY OF SAN ANTONIO *

ARTS AGENCY CONTRACT WITH

AGENCY/FESTIVAL NAME

This Contract is 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. [REDACTED] dated September [REDACTED], 2018, and the **Agency/Festival Name**, (“Contractor”).

WITNESSETH:

WHEREAS, the Department of Arts and Culture is designated as the managing City department (“Department”) 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 ***Festival Support*** (“Project”); and

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

The Parties 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, and Performance Plan, affixed and incorporated into this Contract as **Attachment I**. All work under this Contract shall be completed no later than September 30, 2018.

II. TERM

- 2.1 Except as otherwise provided for pursuant to its provisions, this Contract shall begin on October 1, 2018, and shall terminate on September 30, 2019.
- 2.2 Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII.

III. CONSIDERATION

- 3.1 In consideration of contract obligations, under this Contract, City will pay Contractor for expenses incurred in accordance with the Allowable Costs that are identified as part of **Attachment I** to this Contract. It is specifically agreed that payment shall not exceed \$ [REDACTED].00.
- 3.2 The funding level of this Contract is based on the allocation awarded to Department by the City of San Antonio. The allocation is based on an appropriation for the ***Festival Support*** and Department’s receipt of said allocation. The budget(s) to this Contract may be adjusted to correspond to the actual allocation

awarded. 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 City of San Antonio City Council approved Arts Funding Guidelines.

- 3.3 Contractor understands and agrees that this is a contract to provide Festival support for FY19, based on formulaic calculations outlined in the Arts Agency Funding Guidelines. Investments are made based on a percentage of the Contractor's overall event budget at the beginning of the application three-year cycle. Contractor further agrees to adhere to all requirements outlined in the Arts Agency Funding Guidelines.

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 City's liability under this Agreement is limited to making payments for allowable costs incurred as a direct result of City-funded services provided by Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested payments must be consistent with the terms and provisions of the approved budget described in **Attachment I** of this Contract. In no event shall City be liable for any cost of Contractor not eligible for payment as defined within the Contract.

(B) All funds received under this Contract shall be subject to the following payment schedule ("Disbursement Schedule"):

Disbursement Schedule	
<ul style="list-style-type: none"> • Upon Contract Execution • Completion of FY17 Cultural Data Profile by September 30, 2018 	Performance Plan Completion
50%	50%

- (1) The Disbursement Schedule takes effect upon Contract execution.
- (2) Contractor shall submit an invoice for all payments. Invoice support documents, including the Artistic Activity Report, a copy of which is attached to this Contract as **Attachment II** and incorporated for all purposes, and any other documentation requested by City must be provided along with the invoice for all disbursements.
- (3) If Contract is terminated prior to Performance Plan completion, Contractor shall return any unused funds to City within 15 calendar days of such termination
- (4) Invoice for final payment must include support material for the previous payment as well as all necessary support materials for the final payment. Final payment will be made within 15 calendar days following the approval of all submitted invoices.
- (5) If Contractor fails to timely comply with any of the reporting requirements of this Contract including but not limited to invoicing, submitting Artistic Activity Reports, and any and all documents related to the Contract, as determined by the sole discretion of the Executive Director of Department, funds not yet received under this Contract may convert to a

reimbursement schedule, as determined by the Executive Director of Department, according to standard procedures followed by City's Finance Department.

- 4.3 The City Manager, Assistant City Manager or the Executive Director of Department 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 Department 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 payment shall be accompanied with documentation as may be required by the Executive Director of Department.
- 4.6 Contractor shall submit to City all final requests for payment no later than 30 days prior to the termination of this Contract, unless Contractor receives written authorization from the Executive Director of Department prior to such period allowing Contractor to submit a request for payment after such date.
- 4.7 Contractor agrees that City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of Contractor).
- 4.8 Contractor agrees that Contractor costs claimed as City-approved funding under this Contract, will not be claimed under another contract or grant from another agency.
- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to City.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, City's Director of Finance, the City Auditor, or a person designated by the Executive Director of Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds.
- 4.11 Funds can only be used for the following: **venue rental, contracted services and artist fees, production expenses (production management/staging/sound), lighting and equipment rental all specifically designed for the event.**

V. ADMINISTRATION OF CONTRACT

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

VI. AUDIT

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

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

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

Should any expense or charge that has been paid 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 10 calendar days from the date of notification of such disapproval or disallowance by City. At its sole option, Department may instead deduct such claims from subsequent payments; 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 10 calendar 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 cashier's check or money order. If Department elects to deduct such claims from subsequent payments, during such time, Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

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

VII. RECORDS, REPORTING, AND COPYRIGHTS

- 7.1 Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by Department, Contractor shall furnish to Department, if applicable, such statements, records, data, and information and permit City, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 7.2 Contractor shall submit to Department such reports as may be required by City, including the 2017 Cultural Data Profile on or before September 30, 2018, and the 2018 Cultural Data Profile on or before May 31, 2019; and the Artistic Activity Report form electronically through the online system required by the Department. Said report is to be submitted to Department upon completion of Performance Plan.
- 7.3 The Public Information Act, Government Code Section 552.021, requires City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives

inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within 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 3 calendar days of Contractor's receipt of such request.

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

Contractor acknowledges and agrees that all local government records, as described in this Contract, 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 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 Department, unless required to do so by a court of competent jurisdiction. Department shall be notified of such request as set forth in Article VII., Section 7.3 of this Contract.

- 7.5 City and Contractor agree that should City wish to obtain a license to use the Project for commercial or non-commercial purposes, the parties shall negotiate such a license, upon mutually agreeable terms, at no cost to City. Contractor agrees to execute all documents reasonably requested by City to enable City to utilize all such property.
- 7.6 No later than 30 calendar days prior to contract completion or September 30, Contractor shall submit all final fiscal reports and all required deliverables to City.
- 7.7 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 10.4 of this Contract.
- 7.8 Contractor shall input all information required by City into City's required reporting software system.

VIII. INSURANCE

- 8.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Arts and Culture, which shall be clearly labeled "***Festival Contract***" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Arts and Culture. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 8.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement, and any extension or renewal, 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.
- 8.3 A contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M

Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. *Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. **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
*May be provided through an annual Commercial General Liability policy, or through the purchase of "special events" coverage for specific dates of events. This type of coverage may be purchased on-line through The Event Helper, WedSafe, or through the City's TULIP policy (if the event is held at a scheduled City venue).	
**Automobile Liability coverage is only required if transportation of participants or spectators is involved.	

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

8.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 calendar days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Department of Arts & Culture
Attn: Contracts Manager
203 S. St. Mary's Street, Suite 120
San Antonio, Texas 78205

8.6 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 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 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 City where 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 City.
 - Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.
- 8.7 Within 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 Agreement.
- 8.8 In addition to any other remedies City may have upon Contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City shall have the right to order Contractor to stop work, and/or withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with such requirements.
- 8.9 Nothing contained in this Contract 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.
- 8.10 It is agreed that Contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.
- 8.11 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 City shall be limited to insurance coverage provided.
- 8.12 Contractor and any contractors or subcontractors are responsible for all damage to their own equipment and/or property.

IX. INDEMNITY

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

OF THE PARTIES UNDER TEXAS LAW.

- 9.2 The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 9.3 CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this AGREEMENT.
- 9.4 **Defense Counsel** – City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within 7 calendar days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 9.5 **Employee Litigation** – In any and all claims against any party indemnified 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 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.

X. APPLICABLE LAWS

- 10.1 All of the work performed under this Contract by Contractor shall comply with all applicable Federal, State and local laws, rules, regulations as amended from time to time including but not limited to:
- worker's compensation;
 - unemployment insurance;
 - timely deposits of payroll deductions;
 - Occupational Safety and Health Act regulations;
 - Employee Retirement Income Security Act of 1974, P.L. 93-406.
 - Drug-Free Workplace Act of 1988 and the Texas Worker's Compensation Commission Drug-Free Workplace Rules effective April 17, 1991 (Failure to comply with these may subject the Contractor to suspension of payments, termination of Contract, debarment and suspension actions);
 - American with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder; and
 - City of San Antonio and Bexar County charter, ordinances and bond ordinances.
- 10.2 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 in this Contract. Additionally, Contractor agrees to comply fully with all applicable nondiscrimination, minimum wage, and equal opportunity policies, laws and regulations.
- 10.3 Contractor warrants that all taxes, which Contractor may be obligated for are current, and paid to the fullest extent liable as of the execution date of the Contract. This includes if applicable the filing of:
- Information on Tax Return form 990, 990N or 990T,
 - Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, and

- Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.

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

10.4 Additionally, Contractor shall comply with the following:

- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
- Texas Government Code Chapter 552 pertaining to Texas Public Information Act
- Texas Local Government Code Chapter 252 pertaining to Purchasing and Contracting Authority of Municipalities and Chapter 2254 pertaining to Professional and Consulting Services which can both be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

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

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

10.6 The following provisions shall only apply to Contractor in the event that it meets the definition of Company found below:

Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Contractor verifies that it does not boycott Israel, and will not boycott Israel during the term of this Contract. City relies on Contractor's verification. If found to be false, City may terminate this Contract for material breach, without providing the opportunity to cure.

10.7 It is the policy of the City of San Antonio to provide a work environment to all employees and applicants free of **employment discrimination, harassment and sexual harassment**. In addition, any behavior, regardless of intent or severity, that could be deemed inappropriate workplace behavior, but may not legally constitute **employment discrimination, harassment, or sexual harassment**, is prohibited. **Harassment** and **sexual harassment** are forms of discrimination that violate Title VII of the Civil Rights Act of 1964, (as amended), the Civil Rights Act of 1991, the American with Disabilities Act (ADA), the Age

Discrimination in Employment Act (ADEA), and related State of Texas statutes. Retaliation against employees for opposing alleged *employment discrimination, harassment, or sexual harassment* or for filing a charge, testifying, assisting, or participating in any manner in an Equal Employment Opportunity (EEO) investigation, proceeding, or hearing is prohibited. Contractor shall comply with this policy in all interactions with Contractor's employees and subcontractors, if any, under this Contract.

XI. NO SOLICITATION/CONFLICT OF INTEREST

- 11.1 Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 11.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 11.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 11.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
 - (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
 - (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 11.5 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
 - (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
- 11.6 Contractor warrants and certifies as follows:
 - (i) Contractor and its officers, employees and agents are neither officers nor employees of City.

- (ii) Contractor has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

11.7 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

XII. TERMINATION

- 12.1 Termination for Cause – Should Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, City shall have the right to terminate this Contract by sending written notice to Contractor of such termination and specify the effective date (which date shall not be sooner than the end of 10 calendar days following the day on which such notice is sent). Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the Parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance, of its obligations for which final payment is sought. Should Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be grounds for termination for cause.
- 12.2 Termination for Convenience – This Contract may be terminated in whole or in part when City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the effective date, which date shall not be sooner than 30 calendar days following the day on which notice is sent. Contractor shall also have the right to terminate this Contract and specify the effective date, which date shall not be sooner than the end of 30 calendar days following the day on which notice is sent. Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 12.3 Notwithstanding any other remedy contained in this Contract or provided by law, City may delay, suspend, limit, or cancel funds, rights or privileges 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 payments in cases where it determines that Contractor is not in compliance with this Contract. Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.

XIII. PROHIBITION OF POLITICAL ACTIVITIES

- 13.1 Contractor agrees that no funds provided from or through City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 13.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 13.3 The prohibitions set forth in Article XIII., Sections 13.1 and 13.2 of this Contract include, but are not limited to, the following:

- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 13.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, payments to the Contractor under this Contract may, at City's discretion, be withheld until the situation is resolved.
- 13.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XIV. CONTACT

- 14.1 Contractor's primary and secondary contacts for this Contract will be identified upon contract negotiation and 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 calendar days of the change.

XV. ADVERSARIAL PROCEEDINGS

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

XVI. CITY-SUPPORTED PROJECT

- 16.1 Contractor shall identify all events and activities funded in whole or in part by this Agreement by stating that the Project is "supported by the City of San Antonio's Department of Arts and Culture" and by utilizing the official Department logo. The list of events and activities to be funded as part of this Project is included in **Attachment I** to this Contract.
- 16.2 This requirement shall apply to all print and electronic media and any other media related to events and activities funded in whole or in part by City.

- 16.3 Contractor shall not identify City as a funding provider for any events and activities for which City has not authorized funding. Only events and activities identified within **Attachment I** of this Contract shall be considered to be authorized for funding by City.
- 16.4 If Contractor identifies City as a funding provider for any events and activities for which City has not authorized funding, City may require Contractor to issue a retraction in a format and timeframe directed by City. All costs for retractions shall be the responsibility of Contractor and such costs shall not be eligible for payment under this Agreement.
- 16.5 Contractor shall have all City-supported programs, events and services open to the public and be ADA compliant.
- 16.6 All City-supported events must take place within the City of San Antonio city limits.

XVII. SPECIAL PROVISIONS

- 17.1 Indecency. The following is City's policy statement regarding material and/or performances funded under Department'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 17.1 (B).
 - (B) Contractor must make Department's aware in writing of the intent to perform, sponsor or exhibit the proposed event no less than thirty 30 calendar days prior to the actual activity.
 - (C) The City Council shall have the right to terminate this Contract upon finding that Contractor's activities are not in compliance with the above provisions.

Contractor shall not knowingly encourage, foster, promote or fund any project, production, workshop or program that includes obscene material as defined by Section 43.21 of the Texas Penal Code.
- 17.2 Tourism Impact. Contractor shall provide to City, prior to or at the time this Contract is executed, a list of each scheduled activity, program or event that could enhance and/or promote the visitor/tourism industry. Contractor may satisfy this requirement by submitting an existing calendar of events for the Contract period, provided that Contractor delineates which events on said calendar meet the specified requirements. Contractor shall update said list or calendar in the event of any modifications or additions, as applicable.

XVIII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XIX. ASSIGNMENT

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

XX. AMENDMENT

- 20.1 Any alterations, additions or deletions to the terms of this Contract 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 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 in the following circumstances:
- A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this Subsection during the term of this Contract shall not exceed the foregoing amount;
 - B. modifications to the Performance Plan set forth in **Attachment I**, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in **Attachment I** ;
 - C. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Executive Director of Department;
 - D. adjustments to the funding awarded under this Agreement in order to comply with Texas Tax Code Section 351.103(c) and other applicable laws and regulations, including the Arts Funding Guidelines, so long as any increases in funding comply with Section 20.1(A) above; and
 - E. any modifications to Attachment I necessary to correspond with funding adjustments made under Subsections 20.1(A) and (E) above.
- 20.2 Any amendments to the Performance Plan must be made at least 15 calendar days prior to any event being added to this Agreement by such amendment.

XXI. SUBCONTRACTING

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

XXII. OFFICIAL COMMUNICATIONS

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

City:

**City of San Antonio
Department of Arts and Culture
ATTN: Contract Manager
203 S St. Mary's St. Ste. 120**

San Antonio, Texas 78205

Contractor:

**Organization Name
Street address
San Antonio, Texas 782__**

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

XXIII. VENUE

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

XXIV. GENDER

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

XXV. AUTHORITY

- 25.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations 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 Department verification of the foregoing requirements no later than the execution date of this Contract.

XXVI. INDEPENDENT CONTRACTOR

- 26.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefore, and that neither Party has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 26.2 Nothing contained in this Contract shall be deemed or construed by the Parties 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.
- 26.3 Any and all of the employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of Contractor only, and not of City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of Contractor.

XXVII. SEVERABILITY

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

XXVIII. ENTIRE CONTRACT

28.1 This Contract and its attachments constitute the entire and integrated Contract between the Parties 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 _____, 2018.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Debbie Racca-Sittre, Executive Director
Department of Arts and Culture

Name, Title
Organization Name

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS

Attachment I – Program Statement and Performance Plan
Attachment II – Artistic Activity Report

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 between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Department of Human Services ("Managing City Department") pursuant to Ordinance No. 2018-09-13-_____, dated September 13, 2018, and The University of Texas at San Antonio, ("Contractor") (together, the "Parties").

Background

- A. The City adopted a budget for the expenditure of City of San Antonio General or Grant Fund Operating funds ("General Fund" or "Grant Fund," as applicable), which included an allocation of funds for a project entitled "College Pre-Freshman Engineering Program (PREP)" ("Project"); and
- B. The City wishes to engage the Contractor to carry out the Project.

Contract

The Parties agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide, oversee and administer all activities and services in a manner satisfactory to the City and in compliance with the attached **Scope of Work** and **Scorecard** ("Attachment I").

II. TERM

- 2.1 This Contract shall begin on October 1, 2018 and shall terminate on September 30, 2019.

III. CONSIDERATION

- 3.1 The City will reimburse Contractor in an amount not to exceed \$54,885.00 for costs incurred in accordance with the attached **Budget** ("Attachment II"), and all subsequently authorized Budget Revisions or Budget Amendments to that Budget.

- 3.2 Funding through this Contract is based on an allocation from the following sources:

\$54,885.00 General Fund

Contractor shall comply with the attached **Funding Guide** ("Attachment III").

- 3.3 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 under this Contract. If the City does not receive sufficient funds to make payments pursuant to this Contract or if the award of Grant Funds is reduced, then City, at its sole discretion, may elect to terminate this Contract or reduce the Scope of Work and Compensation. City shall notify Contractor in writing of its determination within a reasonable time.
- 3.4 Contractor's total agency revenues and expenses derived from both non-City sources and from the City is deemed Contractor's Total Budget:

$$\text{Total Budget} = \text{non-City revenue/expenses} + \text{City Revenue/expenses}$$

The percentage of Total Budget derived from non-City sources must meet the following “match” requirements:

- (A) If Contractor receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then Contractor must obtain at least 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).
- (B) 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).

In addition, 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. City shall require sufficient information that Contractor’s match is in place before contract execution, and may request, at the end of each quarter, information and documentation confirming that Contractor has expended or is on course to expend its “match” requirement before the end of the Contract term. City has no obligation to provide any funds until Contractor demonstrates having secured or expended the required percentage of matching funds. Pell grants and other awards received by individuals, and in-kind contributions shall not count toward its matching fund requirements. If Contractor does not provide City with acceptable information and documentation that the required amount of non-City funds have been expended then City may reduce or recapture funds pursuant to Section 4.6 to comply with the match requirement. Contractor acknowledges that reduction or recapture of funds pursuant to Section 4.6 does not require the approval of City Council.

IV. COST REIMBURSEMENT; FISCAL RESPONSIBILITY

- 4.1 ***Allowable Costs*** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XI for the proper administration and performance of the services to be provided under this Contract.* The City’s payment obligation under this cost reimbursement Contract is limited to making reimbursements for Allowable Costs incurred as a direct result of City-funded services provided by the Contractor in accordance with this Contract and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Contract Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Contract Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- 4.2 **Advance payment.** In case of unforeseen or special circumstances, Contractor may submit to the Director of the Managing City Department, in the form prescribed by the City, a written request for advance payments, including the specific reason for such request no less than ten (10) business days before the requested date of payment. Each request will be considered by the Director of the Managing City Department on a case-by-case basis. The Director of the Managing City Department’s shall have sole discretion to approve or disapprove a request. If advance payments are approved then:
 - a. Contractor’s payments to its vendors using funds advanced by the City shall be paid in a prompt and timely manner but no later than 10 calendar days after the Contractor is notified that an advance payment has made available so long as services have been performed by the vendor.
 - b. Contractor must deposit advanced City funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If Contractor’s total deposits in the bank, including all City funds deposited with the bank, exceed the FDIC insurance limit, then the Contractor must arrange to automatically have the excess collaterally secured. Contractor must provide City a copy of the collateral agreement with the Contractor’s banking institution. Advanced funds that cause the Contractor’s account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). 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, in detail, expenditures made pursuant to this and all other City contracts.

- c. The City may, in its sole discretion, either 1) deduct pro rata from the remaining monthly reimbursements amounts necessary to offset the amount advanced, or 2) deduct from a single subsequent monthly reimbursement the full amount advanced to Contractor. The City will consider factors such as projected allowable costs and other pertinent 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's Request for Payment.** Contractor shall submit to City no later than the 15th of every month a monthly Request for Payment in the form prescribed by City, which details:
- a. 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; and
 - b. supporting documentation of costs as may be required by the Director of the Managing City Department (e.g., original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses); and
 - c. the Program Income received or projected during the same time period.
- 4.4 **City Payment.** City shall pay for eligible expenses and undisputed amounts in submitted Requests for Payments within 30 calendar days of receiving a properly completed, documented and approved Request for Payment.
- 4.5 **Final Request for Payment.** The Contractor shall submit to City all final requests for payment no later than 30 days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department allowing Contractor to submit a request for payment after the 30 day period.
- 4.6 **Return of Funds.** Contractor must return any of the following to the City within 10 business days of either City's written notification, or the Contractor becoming aware, the existence of funds, credits on-hand or collected, advance payments that:
- a. exceed allowable costs incurred during the Contract term; or
 - b. for which Contractor fails to deliver services as specified under the Contract.

Any amounts not returned within 10 business days may, at City's option, be subject to offset against future funding obligations by City. ***"Business day"** means 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.*

- 4.7 **Cost Rules.**
- (A) **Administrative Overhead.** Administrative overhead costs may not exceed twenty percent (20%) of the funding provided under this Contract. More stringent administrative overhead costs limitations may be applicable due to grant regulations associated with Contract funding. Contractor shall provide City detailed administrative costs by line item with its annual program budget.
 - (B) Contractor shall establish, submit with supporting documentation and use a Cost Allocation Plan with Contractor's annual program budget 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 and overhead not solely devoted to the Project funded by this Contract. The ***Cost Allocation Plan*** substantiates how the costs of a program are charged to a particular cost category or to the program and ensures that the City is paying only its share of the costs for services, overhead, and staffing.
 - (C) 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.

- (D) 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.
- (E) The use or purchase of gift cards is not allowed and not reimbursable under this Contract.
- 4.8 Each year Contractor shall submit to the Managing City Department a form 990 or 990T no later than 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 Contractor files under the extension.
- 4.9 The Contractor warrants 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 and throughout the term of the Contract.
- 4.10 Contractor shall comply with the following check writing and handling procedures:
- (A) No signing of blank checks.
- (B) No checks made payable to cash or bearer with the exception of those for petty cash reimbursement. Petty cash checks must not exceed 1) \$100.00 maximum per check and 2) \$200.00 in aggregate 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 the limit. 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 immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 4.11 Contractor shall comply with the following:
- (A) *"Program Income" means Contractor earnings from activities under this Contract or from Contractor's management of funding provided or received under this Contract. Program Income includes, but shall not be limited to,*
1. *interest income;*
 2. *usage or rental/lease fees;*
 3. *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*
 4. *payments from clients or third parties for services rendered by Contractor pursuant to this Contract.*
- Contractor must not charge fees or solicit donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
- (B) The Contractor must fully disclose and be accountable to the City for all **Program Income**. Contractor shall provide 30 days' written notice detailing the type, time, and place of all activities, anticipated to generate program income. Within 30 days after activity that generates program income, Contractor must submit a statement of expenditures and revenues to the Managing City Department. 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.
- (C) At the sole option and upon prior written direction from the Director of the Managing City Department, Contractor will either:
1. return **Program Income** funds to City within the timeframe that may be specified by the Director of the Managing City Department; or

2. retain **Program Income** funds to be added to the Project and used to further eligible Project objectives but only if the proposed expenditures are approved by the City; or
3. deduct **Program Income** funds from the total Project cost for the purpose of determining the net cost reimbursed by the City. In this case, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.

(D) Contractor must include this Section 4.11, in its entirety, in all of its subcontracts involving income-producing services or activities.

- 4.12 The City shall not be obligated to any third parties of Contractor (including any subcontractors or third party beneficiaries of Contractor) under this Contract.
- 4.13 Contractor shall maintain a financial management and accounting records system that provides the following:
 - 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 VII 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. The 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;
 - d. identification of separate funds by funding source and project;
 - e. 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;
 - f. procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
 - g. 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 the City;
 - h. supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
 - i. 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.
- 4.14 The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The City may, in its sole discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract.
- 4.15 Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. City may immediately terminate this Contract if the City finds, in its sole discretion, that Contractor's financial condition may impact performance under this Contract. The City may consider:
 - a. evidence such as the apparent inability of Contractor to meet its financial obligations;
 - b. items that reflect detrimentally on the credit worthiness of Contractor;
 - c. pending litigation, liens and encumbrances on the assets of Contractor;
 - d. the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property;

or

- e. 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. CONTRACT ADMINISTRATION

- 5.1 City-Supported Project. Contractor shall publicly acknowledge that this Project is supported by the City of San Antonio, Department of Human Services. Contractor must 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 City marks or logos, as applicable, to be used.
- 5.2 Contractor shall use the online Contract Management System provided by the City for the purpose of submitting all Contract related documents, including, but not limited to, monthly reports, budgets, budget revisions and requests for payment.
- 5.3 The Contractor shall comply with all **Grant Contract** (attached as **Attachment VII**, if applicable) terms and conditions and applicable grant program policies and procedures the City must comply with if this project is Grant funded.
- 5.4 If any disagreement or dispute arises between the Parties that pertains to this Contract or any applicable governing rules, regulations, laws, codes or ordinances, then the City Manager, as the City representative ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the Grantor's rules or regulations, if Grant funded, shall have the final authority to render or secure an interpretation.
- 5.5 The City may, during normal business hours, inspect the operating facility used by the Contractor for the administration of this Contract and may require safety or security measures such as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment funded by this Contract.
- 5.6 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions, including, but not limited to:
 - a. Roster of current Board Members (name, title, address, telephone number and e-mail address);
 - b. Current and any amendments to Bylaws and Charter;
 - c. Terms of Officers;
 - d. Schedule of anticipated board meetings for current Fiscal Year;
 - e. Board Agenda, to be submitted at least three (3) business days prior to each Board meeting; and
 - f. Minutes of board meetings that are approved by the Contractor's board
- 5.7 Contractor must have or shall comply with the following regarding personnel management:
 - (A) An employee ethics or integrity policy that outlines a) the requirements for employees to conduct themselves in an ethical manner consistent with the values of the Contractor; and b) the process for identifying, investigating, and enforcing potential breaches of the policy.
 - (B) Internal project management procedures to mitigate the risk of theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to reasonably 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.
 - (C) The employee ethics policy and the project management procedures will be provided to the Managing City Department upon request by the Managing City Department.
 - (D) Contractor shall immediately notify the City if any unethical, illegal, or potentially fraudulent activity involves or is related to funds provided by the City and shall provide the City with timely updates on any investigation or inquiry into the activity.

- (E) Contractor represents and warrants that it has conducted a criminal background check, at its own expense, for employees providing services related to this Contract. No employee of Contractor shall be eligible to perform services related to this Contract if he or she, (1) has been convicted of, or was placed in a pre-trial diversion program for, any crime involving dishonesty or breach of trust including, but not limited to, check kiting or passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (2) has been convicted of any weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation, extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use; or 3) is listed on the national register of sex offenders.
- (F) The 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.
- (G) Chief Executive Officers (CEOs), directors and other management positions may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, ("Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives may be co-workers in the same Project but only in non-supervisory roles.
- (H) Contractor represents and warrants that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all licensing, training, and competency standards promulgated by relevant authoritative or professional bodies. The Contractor will 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.
- (I) Contractor must include written job descriptions in personnel folders for each position in the organization funded through this Contract. Job titles and descriptions in the budget (**Attachment II**) that affect a salary or range increase may not be changed without the prior written approval of the Director of the Managing City Department.
- (J) The Director of the Managing City Department may, in his or her sole discretion, approve reimbursement of pay to full time, permanent employees for other than annual or personal leave for the following:
 - 1. To attend Armed Services training, up to 15 business days;
 - 2. To serve as a juror;
 - 3. To attend the funeral of someone in the immediate family, up to 3 days as long as not charged to annual or personal leave. 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 the relative.
 - 4. To attend seminars or workshops.

5.8 The following applies to equipment or intellectual property that was purchased or created with City funds:

- (A) Ownership. The City shall own all tangible property, including but not limited to, vehicles, equipment and furniture, purchased with funds received through the City. The tangible property shall, at the City's sole option, be delivered to the City upon the expiration or termination of this Contract. The Contractor must relinquish and transfer possession of and, if applicable, title to tangible property without the requirement of a court order. Tangible property that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. No tangible property purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department.
- (B) Contractor shall maintain records for and provide an annual inventory of tangible property purchased with City funds, to include:
 - 1. A description of the item, including the model and serial number, if applicable;
 - 2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;

3. An indication of whether the item is new or used;
 4. The vendor's name (or transferred from);
 5. The location of the property;
 6. The property number shown on the property tag; and
 7. A list of disposed items and disposition.
- (C) Contractor shall safeguard, maintain and fully insure all City-funded property against fire, loss and theft. The Contractor is also solely responsible for reporting and replacing with like property all lost, stolen, missing, damaged, or destroyed property purchased or leased with City funds. All replacement property will be treated in the same manner as property purchased with City funds. All lost, stolen, missing, damaged and/or destroyed property shall be reported to law enforcement agencies as appropriate. The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the property having been lost, stolen, missing, damaged and/or destroyed.

The report submitted by the Contractor to the Managing City Department must include:

1. A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
 2. A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
 3. A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.
- (D) Ownership of Intellectual Property. The Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. If the City is unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing contained in this Contract 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.

5.9 Contractor shall comply with the following regarding City-funded travel:

- (A) Travel costs are allowable if:
1. they are approved in the budget;
 2. supported by detailed documentation, for example, conference costs to include itineraries and documentation certifying conference attendance;
 3. travel costs (including per diem rates) are do not exceed those allowed under the City's travel policies and conform to the reimbursement rates under the United States General Services Administration; and

4. transportation fares are at economy class rates.

- (B) Mileage reimbursement rates must not exceed the City's policy for mileage reimbursement and must comply with IRS rules. To be eligible for mileage reimbursement, the employees must
1. possess a valid Texas Driver's License and liability insurance as required by law; and
 2. record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep the record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City.

Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

- 5.10 The Department of Human Services participates in a Dual Generation initiative with the United Way of Bexar County and San Antonio. To continue to promote best practices, Contractor is encouraged to adhere to the following principles while performing the scope of work:
- a. A multi-generational approach – Partners/contractors understand that they can more effectively address a child's needs within the context of the capacity and needs of the entire family and vice versa.
 - b. Families are partners - A coaching approach, instead of a traditional case management model, supports family-centered actions to work with the family toward their goals. Families inform the work of the partnership and participate in collective decision-making.
 - c. Mutual accountability and shared outcomes – As no single partner/contractor alone can guarantee positive outcomes for families all partners have a vested interest in collectively supporting families and each other. Partners/Contractors remain accountable for their contribution to family wellbeing but understand the limits of their contribution and their need to rely on other partners/contractors.
 - d. Collaboration and coordination – Partners/contractors participate in regular forums with other providers serving the same families and coordinate their work both at the family and partnership level.
 - e. Data sharing and continuous learning – Partners/contractors routinely share and review individual and aggregate level performance data to inform and improve their work with families and as a partnership. Partners/contractors commit to using a client level shared data platform as source for this learning.

VI. AUDIT

- 6.1 If Contractor expends \$750,000 or more of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete an independent audit and submit the audit report within the earlier of:
- a. 30 calendar days after receipt of the auditor's report(s); or
 - b. 9 months after the end of Contractor's fiscal year; or
 - c. 9 months after the expiration or early termination of this Contract.

Contractor must furnish the Managing City Department a copy of the corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within 30 calendar days of receipt of the audit report or upon submission of the corrective action plan to the auditor.

If Contractor is notified of federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within 10 calendar days of receipt of the report.

- 6.2 If Contractor expends less than \$750,000 of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete and submit an unaudited financial statement(s) within the earlier of:

- a. 9 months following the end of Contractor's fiscal year; or
- b. 9 months following expiration or early termination of this Contract.

The financial statement must include the following 1) a balance sheet and income statement prepared by a bookkeeper, 2) a cover letter signed by Contractor attesting to the correctness of the financial statement, and 3) a schedule of receipts and disbursements by budgeted cost category for each project funded by the City.

- 6.3 If Contractor receives or expends more than \$750,000 in federal funds from the City, then an audit must be conducted 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 (Uniform Guidance). Contractor shall submit copies of its annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or 9 months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana.

Contractor may submit reports through the following website:

<https://harvester.census.gov/facides/Account/Login.aspx> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

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

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

Contractor agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.

- 6.4 The City may conduct or have an audit conducted or conduct a review of the use of funds and documentation associated with this Contract. City is entitled to determine the scope of any audit. 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. Contractor must make available to City all accounting and Project records.
- 6.5 Contractor, 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, must make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract 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. The records shall be maintained for the required retention period, except if there is pending litigation or if the audit report has not been accepted, then the Contractor shall retain the records for as long the City requires retention. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.
- 6.6 If an audit or examination determines that the Contractor has expended funds or incurred costs which may be inconsistent with this Contract or if the applicable state or federal governing agency raises compliance issues, then Contractor shall be notified and provided an opportunity to address the issues.
- 6.7 City shall provide Contractor written notification if reimbursed expenses or charges are disallowed by the City because of review or audit findings. The Managing City Department may, in its sole discretion, elect

to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Contractor to fully refund the disallowed amounts by cashier's check or money order within ten days after receipt of written notification. Contractor may not reduce Project expenditures if the City opts to deduct disallowed expenses or charges from future reimbursements.

- 6.8 Any expenses for the collection of delinquent debts owed by Contractor are the sole responsibility of the Contractor and shall not be paid from any Project funds.
- 6.9 If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit from non-City resources.

VII. RECORDS AND REPORTING

- 7.1 The Managing City Department is responsible for monitoring, fiscal control, and evaluation of this Project.
 - (A) Contractor shall submit to the Managing City Department a **Contract Monitoring Report** no later than the 15th day of every month detailing the actual services delivered and outcomes achieved against the projected performance measures, and shall attach documentation supporting the same, for the month preceding the submission. A Contract Monitoring Report containing projected monthly performance measures for the entire Contract term is attached. (**Attachment IV**).
 - (B) At such times and in such form as may be required by the Managing City Department, Contractor shall prepare and submit to the Managing City Department or the Grantor of applicable grant funds any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Contract.
 - (C) Within 30 days from the expiration or termination of this Contract, Contractor shall submit all final reports and deliverables to City along with a receipt for all sums and a release of all claims against the Project.

The Contractor represents that all information in reports submitted to City is accurate and that supporting documentation shall be maintained. The Contractor shall, upon reasonable request, allow and facilitate interviews or discussions with its personnel, board members and Project participants.

- 7.2 Contractor shall not disclose information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City, which is marked "confidential" or for which City informs Contractor is "confidential," including, without limitation, reports, records, 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 under this Contract. Contractor shall protect the Confidential Information and shall take the necessary steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VII, Section 7.2, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VII, Section 7.2 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 request at the expiration or termination of this Contract, Contractor shall deliver to City all copies of materials related to the Project, including the Confidential Information.
- 7.3 If applicable, Contractor shall execute a **HIPAA Business Associate Agreement** in substantially the same form as shown in **Attachment VI**, which is intended to protect the privacy and provide for the security of

Protected Health Information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

- 7.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Contractor represents that no 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.
- 7.5 Contractor shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.2(C) of this Contract

VIII. INSURANCE

- 8.1 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.

IX. INDEMNITY

- 9.1 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.

X. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

THIS SECTION INTENTIONALLY LEFT BLANK

XI. COMPLIANCE WITH LAWS

- 11.1 Contractor shall comply with all applicable federal, state and local laws, rules and regulations, codes, charters, ordinances, rules, regulations, policies, and procedures, and any and all amendments or additions to these as they may be promulgated, applicable to the services provided by, or funds received by Contractor hereunder, as directed by the City or as required in this Contract. Failure to comply with applicable laws may subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.2 Additionally, Contractor shall comply with the following:
- (A) If using City of San Antonio General Funds, expenditures shall be made in accordance with:
 - 1. Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
 - 2. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
 - (B) The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988.
 - (C) Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - (D) 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>. 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 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 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.
- (E) 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 in this Contract.
- (F) Additionally, Contractor shall comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
1. Title VII of the Civil Rights Act of 1964, as amended;
 2. Section 504 of the Rehabilitation Act of 1973, as amended;
 3. The Age Discrimination Act of 1975, as amended;
 4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 5. Fair Labor Standards Act of 1938, as amended;
 6. Equal Pay Act of 1963, P.L. 88-38;
 7. Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and
 8. All applicable regulations implementing the above laws.
- (G) The Contractor shall comply with all applicable local, state, and federal employment laws including, but not limited to:
1. worker's compensation;
 2. unemployment insurance;
 3. timely deposits of payroll deductions;
 4. 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;
 5. Occupational Safety and Health Act regulations; and
 6. Employee Retirement Income Security Act of 1974, P.L. 93-406.
- (H) 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.

- (I) Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

1. does not boycott Israel; and
2. will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, Contractor, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Contract. City hereby relies on Contractor's verification. If found to be false, City may terminate this Contract for material breach.

- 11.3 In addition, if Contractor received federal grant funds through this Contract, Contractor agrees that:

- (A) Contractor shall comply with the 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.
- (B) If federal funds are in excess of \$150,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this Contract and the appropriate EPA Regional Office. Additionally, Contractor agrees to include these requirements in each subcontract to this Contract exceeding \$150,000 financed in whole or in part with federal funds.
- (C) Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Contractor agrees to include within its subcontracts a requirement that its subcontractors comply with this provision.
- (D) Contractor has tendered to the City a Certification of Restrictions on Lobbying in compliance with the Byrd Anti-lobbying Amendment (31 U.S.C. §1352), and any applicable implementing regulations, if Contractor applied for or bid for an award exceeding \$100,000.00 from the City.
- (E) In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with

any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

- 12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 12.4 No member of 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 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 12.6 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. TERMINATION

- 13.1 Termination for Cause. Should the Contractor fail to fulfill in a timely and proper manner, or violate, obligations, covenants, conditions, or stipulations of this Contract, the City shall 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 10th day following the day on which such notice is sent).
- 13.2 Termination for Convenience. This Contract may be terminated in whole or in part by either Party for any reason. Such termination shall specify the effective date thereof, which date shall not be sooner than the 30th day following the day on which notice is sent.

- 13.3 The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.
- 13.4 Notwithstanding any other remedy contained in this Contract or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges 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 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.

XIV. DEBARMENT

- 14.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program. Contractor shall provide immediate written notice to City, in accordance with the notice requirements of **Article XVII**, 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.
- 14.2 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. AMENDMENT

- 15.1 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** 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 in **Attachment V** 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 3.4, and to amend the budget accordingly which is set forth in **Attachment II**. Contractor shall execute any and all amendments to this Contract that are required as a result of a

modification made pursuant to this Section 15.1(E); or

- (F) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

XVI. ASSIGNMENT AND SUBCONTRACTING

- 16.1 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.
- 16.2 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. 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.
- 16.3 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 under this Contract, including those referenced in Section 11.2(A). It is further agreed by the Parties 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 Contractor failed to comply with this Section, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination.
- 16.4 Licenses And Training for Subcontractors. Contractor warrants and certifies that Contractor's subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all competency standards promulgated by relevant authoritative bodies, as applicable to the services provided hereunder.
- 16.5 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.

XVII. OFFICIAL COMMUNICATIONS

- 17.1 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. Krystal L. Peralez
Director
University of Texas at San Antonio
501 W. Cesar E. Chavez Blvd.
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.

XVIII. PROHIBITED ACTIONS

18.1 Political Activity.

- (A) 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.
- (B) 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.
- (C) The prohibitions set forth in Sections 18.1(A) and 18.1(B) of this Contract include, but are not limited to, the following:
 - 1. 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;
 - 2. 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;
 - 3. 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
 - 4. 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.
- (D) 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, which shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the contact person listed on the statement within the Managing City Department. Contractor shall have each said individual sign a statement acknowledging receipt of the policy.
- (E) 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.
- (F) This Section 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.

18.2 Adversarial Proceedings. Contractor agrees that 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. Contractor understands that the City may deem Contractor ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

- 18.3 No Use of Funds for Religious Activities. 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 benefit, directly or indirectly, any such sectarian or religious facility or activity, or for the construction, operations, maintenance or administration of any sectarian or religious facility or activity.
- 18.4 Contribution Prohibitions. Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for an entity 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 Consolidated Human Development Funding Services Pool Request for Proposal (RFP) is released, and ending on the 30th calendar day following the contract award. 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. Contractor acknowledges that the City has identified this Contract as high profile. Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 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.

XIX. MISCELLANEOUS

- 19.1 Independent Contractor. 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 has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 19.2 Nothing contained in this Contract shall be deemed or construed by the Parties 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.
- 19.3 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.
- 19.4 Non-Waiver. No waiver, change, modification or discharge by either Party 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. 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. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Contract or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.
- 19.5 Venue. 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 under this Contract are performable in Bexar County, Texas. Any action or proceeding to 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.
- 19.6 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.

- 19.7 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 City, it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained. It is also the intention of the Parties 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.
- 19.8 Authority. 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 its terms, conditions, provisions and obligations. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in its application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.
- 19.9 Entire Contract. This Contract and its attachments, if any, contain all of the terms and conditions agreed upon, constitute the entire and integrated Contract between the Parties, 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

Dr. Krystal L. Peralez, Director

Date

Date

ATTACHMENTS

Attachment I – Scope of Work and Scorecard
Attachment II – Budget
Attachment III – Funding Guide
Attachment IV – Contract Monitoring Report
Attachment V – N/A
Attachment VI – N/A
Attachment VII – N/A

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 September ____, 2018 (“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, 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 1,000 \$50.00 rebates to be funded from the Tree Mitigation and Tree Canopy Funds (“Funds”); and

WHEREAS, \$50,000.00 has been approved in the City’s FY 2019 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 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 for 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 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 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 Tree Shade 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 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 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 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 educational material
 - v. **General Program Implementation**
 - 1. 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 shall not be called for the Committee for 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 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 purpose 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:

Parks and Recreation Department
5800 Enrique Barrera Parkway
San Antonio, TX 78227

Attn: Ross Hosea
Ross.Hosea@sanantonio.gov
Copy to: Grant Ellis
Grant.Ellis@sanantonio.gov

CPS Energy
P.O. Box 1771-MD 100406
San Antonio, TX 78296

Attn: Kimberly R. Stoker
krstoker@cpsenergy.com
Copy to:
balettman@cpsenergy.com

8. Term

The term of this Agreement will commence upon fully execution and will terminate September 30, 2019, but may be terminated at an earlier time by approval of both Parties.

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

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

CPS Energy

By: _____
Xavier D. Urrutia, Director

By: _____
Kimberly R. Stoker, Senior Director

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Attachment: FY 2019 Program Budget Outline

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. 2018-09-13-_____ passed and approved on September 13, 2018, 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, 2019.
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
San Antonio, TX 78205

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

12. 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.
13. 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.
14. 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 _____, 2018.

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, community alignment, and community engagement:

1. Produce an Annual Impact Report of Community Indicators. This includes 61 current indicators, as well as the addition of Housing and Transportation Index (identified in City of San Antonio’s SA Tomorrow process), Sufficient Housing (measured by affordable housing units per 100k population as identified in the Mayor’s Housing Policy Task Force). This report will be released at an event in January 2019 and provides transparent and objective measures of San Antonio’s vision of prosperity. Additionally, this report will be available in print for those in attendance at the release event and made available to each Council Member and City department, as well as online for review and public consumption.
2. Redesign the SA2020 Community Indicators Dashboard, linking to additional resources as available. This redesigned Dashboard will be both explanatory and exploratory, and serve to highlight partner impact, showcase ongoing initiatives and efforts, and help tell a more robust story of San Antonio’s progress toward its shared vision.
3. Working with data partner, SA2020 will disaggregate additional community indicators (as available) by city council districts, then package reports for Council Representatives, the community at-large, and city departments in January 2019. Reports may include the following (as available):
 - a. Population Density & Estimated Population Discrepancy
 - b. Race/Ethnicity
 - c. Labor Force Participation & Unemployment
 - d. Detailed Age Breakdown
 - e. Voter Turnout
 - f. Per Capita Income
 - g. Educational Attainment
 - h. Health Care Access
 - i. Household Size
 - j. Broadband Connections
 - k. Vacancy Rate/Residential Stability
 - l. Housing Cost Burden (owner & renter)
 - m. Transit Frequency
 - n. Teen Pregnancy
 - o. Life Expectancy
 - p. Population Change
 - q. Working-Age Disability
 - r. Senior Centers
 - s. SA2020 Nonprofit Partners
 - t. Parks

- u. Libraries
 - v. Quality Childcare Centers
 - w. Colleges/Universities
4. Actively coordinate discussions and action plans on complex community challenges, linking city departments to community engagement activities that can include: ilovesanantonio.org / meencantasanantonio.org; social media channels; presentations; reports; and collaborative working groups.
 5. Facilitate and Evaluate community funders group to show alignment and gaps.

The City of San Antonio will:

1. Provide a central point of contact for the collection of current indicators to work with SA2020 and SA2020's data provider to finalize data for the 2018 Impact Report and online dashboard.
2. Disseminate Reports to Council offices and departments and coordinate any presentations/discussions by SA2020 to strengthen the connection between the City's work and the progress on Community Results.
3. Provide updated information related to Senior Centers, Parks, Regional Centers, and Libraries by Council District and identify additional potential information to share via Council District.
4. Provide a central point of contact for ongoing public participation and engagement strategies to streamline communications and efforts with SA2020.
5. Actively coordinate programs and efforts and practice ongoing, transparent peer-exchange with SA2020

AGREEMENT TO USE FUNDS AND SUPPORT FOR BOOK FESTIVAL

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. XX passed and approved on September 13, 2018 and the San Antonio Book Festival (hereinafter referred to as Recipient) by and through its President and CEO, **WITNESSETH:**

WHEREAS, City of San Antonio has allocated funds in the annual capital and operating budget for Fiscal Year 2018-2019 for support of the annual Book Festival event on April 6, 2019 in San Antonio with access offered free and open to the public; 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 expectations 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 and responsibilities indicated in 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 the planning and execution of the annual Book Festival in San Antonio.
3. Eligible costs for reimbursement include the planning, staging and executing the day-long free Book Festival to include: staffing; logistics (rentals, signage, etc.); promotional coordination; author events; educational and community outreach; children's and family activities; and program development. The April 6, 2019 Book Festival shall be free and open to the public.
4. 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 15.
5. Recipient shall provide to City a description of the deliverables and provide an invoice for the amount due. Reimbursement shall be dependent upon completion of agreed upon milestones and deliverables outlined in Attachment I. All requests for reimbursement shall be made no later than July 31, 2019.

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 the City. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

The City of San Antonio may require the Contractor's submission of original or certified copies of invoices, cancelled checks, payroll records and/or receipts to verify invoiced expenses along with a detailed summary of expenditures.

Contractor agrees that all requests for payment shall be accompanied with documentation as may be required by the City of San Antonio.

Contractor agrees that Contractor costs claimed as City-approved funding under this Contract will not be claimed under another contract or grant from another agency.

6. 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.
7. The San Antonio Public Library, as a partner of the Book Festival, shall provide additional support for the Book Festival which will be held in-part on the grounds of the Central Library. Attachment II outlines the role of the Library.
8. 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."
9. This Agreement is not assignable and funds received as a result hereof shall only be used by the parties stated herein.
10. 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.
11. 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.
12. **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.
13. **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.

14. 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.
15. 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: Executive Director
San Antonio Book Festival
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.

16. 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.
17. 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.
18. 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.

19. This agreement will terminate once all eligible reimbursements are disbursed in an amount not to exceed \$150,000.00, funded by the City of San Antonio.

IN WITNESS OF WHICH this Agreement has been executed on this ____ day of_____, 2018.

CITY OF SAN ANTONIO

SAN ANTONIO BOOK FESTIVAL

By: _____
Ramiro S. Salazar
Director

By: _____
Katy Flato
Executive Director

APPROVED AS TO FORM:

City Attorney

Attachment I

Milestones and Deliverables

Phase 1 Deliverable

A finalized event plan will be presented to the Library Director for approval no later than one month before the event. The event plan will include estimated costs of SAPL deliverables outlined in Attachment II.

Phase 2 Deliverable

Execution of San Antonio Book Festival

Attachment II

Support from the San Antonio Public Library, a partner entity

Use of Central Library

1. Provide full use of the Central Library building as follows:
 - a. Wednesday, April 3, 2019 from 7 a.m. - 9 p.m. – Auditorium, Gallery, and West Terrace and other spaces as necessary and agreed to between both parties.
 - b. Thursday, April 4, 2019 from 8 a.m. - 9 p.m. – Auditorium, Gallery, Plaza and West Terrace and other spaces necessary and agreed to between both parties.
 - c. Friday, April 5, 2019 from 8 a.m. – 6:30 p.m., Auditorium, Auditorium Foyer, Gallery, West Terrace, Story Room, Plaza, Marie Schwartz Arts Resource Center and Latino Collection & Resource Center
 - d. Saturday, April 6, 2019 from 6 a.m. – 9 p.m., Auditorium, Auditorium Foyer, Gallery, and West Terrace, Story Room, Plaza, Chihuly Atrium, Marie Schwartz Arts Resource Center and Latino Collection & Resource Center
 - e. Sunday, April 7, 2019 from 8 a.m. – 5p.m., Auditorium and Gallery, West Terrace
 - f. Monday, April 8, 2019 from 8 a.m. – 9 p.m., Auditorium and Gallery, West Terrace
 - g. Other venue space locations and/or dates may be added as agreed upon between San Antonio Public Library (SAPL) and San Antonio Book Festival (SABF).
 - h. Additional areas identified are Launch SA Phase I and Phase II included, which are housed in Central Library but operated by Launch SA directly. All coordination and agreement of use of Phases I and II will be agreed to between SABF and Launch SA.
2. Use of the Central Library building includes use of event tables and chairs, storage and move-in of event supplies as needed starting at 7 a.m. on Wednesday, April 4, 2019; breakdown on Saturday, April 6, 2019 with any leftover supplies to be stored in the Gallery and removed no later than April 8, 2019.

Library Participation in Book Festival

1. SAPL will host and staff up to two 10x10 tent spaces to market and demonstrate Library services and programming. Any branded tents will be supplied by SAPL; tables and chairs are to be provided by SABF.
2. SAPL Teens will host and staff activities as agreed to between both parties.

Staffing & Services

1. On Saturday, April 6, 2019, the Central Library's public service staff hours to 1st Floor will be extended by one hour to close at 6 p.m.
 - a. Staffing will be adjusted to accommodate the extended business hours for that day.
 - b. Library will begin closing procedures starting at 5:30 p.m. on floors 3 – 6
 - c. Staff will not turn off lights on floors 3-6 until 6 pm and will assist Security in doing final floor sweeps for those floors. As necessary, Book Festival attendees will be allowed building entry through back doors after 6pm, no later than 6:30pm.
 - d. Public computers will shut down in Connect at 5 pm as per usual.
 - e. The Library will not make an intercom announcement announcing closure.
2. Library staff will support SABF planning and coordination by attending pre-event logistics meetings and assisting on the day of the event.

Facility Management

1. Library to provide:
 - a. Staffing for first floor bathrooms that will consist of in-house SAPL facilities who will maintain cleaning schedule intervals of every 15 minutes between the hours of 9 a.m. and 6 p.m.
 - b. Additional security guards and extended staff coverage hours
 - c. Additional facilities/maintenance staff and extended staff coverage hours.
 - d. Additional service staffing and extended staff coverage hours

2. SAPL will offer use of sign stands, as available, for signage needs. Printed signs to be provided by SABF.
3. SAPL to provide 35-gallon trash cans based on available inventory. SABF to secure additional trash cans and recycle bins as needed for Plaza and other outdoor SAPL areas.
4. SABF will coordinate parking garage needs/requests (i.e., use of parking garage for event, banner installation).
5. SABF will coordinate and secure any additional parking at neighboring parking lots. SAPL will assist with contact information, as needed.

Partnerships

1. Partnerships with SABF and its partners, such as Launch SA, Southwest School of Art, Barnes & Noble and other vendors will be liaised directly between the two parties.
2. A SABF official representative will communicate any special requests from SABF or its partners directly to the Library Event Services lead and the Community & Public Relations Manager.

Publicity

1. SAPL provides full spectrum promotional support to SABF through its 30 Library locations as well as all publicity channels available including its website.
2. SABF will include the SAPL logo on promotional and collateral items as a founding partner.
3. Other materials and support will be provided as agreed upon between SAPL and SABF.

Event Value and Metrics

1. SABF will provide a comprehensive annual Book Festival report by July 31, 2019 to include:
 - a. SABF Budget
 - b. Overall attendance for SABF and related activities for Festival day.
 - c. Program-specific attendance
 - d. Number of authors participating in SABF
 - e. Publicity value and synopsis of media coverage
 - f. Number of volunteers
 - g. Number of partnerships with other organizations or entities
 - h. Any other data used to gauge the value of the Book Festival
2. SAPL will provide SABF with a door count provided by the Central Library's automated door counter located at the facility's entry doors.

General

1. Support outlined in this Appendix can be modified with concurrence by both SAPL and SABF on any changes.

STATE OF TEXAS § FUNDING AGREEMENT
§ WITH
COUNTY OF BEXAR § SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC.

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and San Antonio Botanical Garden Society, Inc. (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation. GRANTEE and CITY shall collectively be referred to as "the Parties."

PREAMBLE

WHEREAS, City and GRANTEE have successfully managed the San Antonio Botanical Garden since 1981; and

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

WHEREAS, \$1,063,362 has been approved in the City's FY 2019 adopted annual budget; and

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

1.1 This Agreement shall commence October 1, 2018 and terminate September 30, 2019, unless terminated sooner according to the terms herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.1 GRANTEE shall provide the services as outlined in the attached Exhibit A – Scope of Services.

III. FUNDING BY CITY

3.1 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 related to Exhibit A – Scope of Services. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$1,063,362.00.

IV. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

4.2 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.
- b) That GRANTEE'S record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

4.3 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.

4.4 Disbursement of funds shall be based upon invoices submitted by GRANTEE. Invoices shall be submitted no more than monthly and no less than twice per year. Subsequent to disbursement, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.5 If necessary, GRANTEE may request an advance payment to partially offset GRANTEE'S expenses associated with the services outlined in Exhibit A – Scope of Services. If advance payments are requested,

GRANTEE shall provide an advance payment request. Prior to the next payment request, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.6 Eligible expenses 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.

4.7 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.

4.8 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.

4.9 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out herein 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.

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

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.1 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, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors.

5.2 Grantee agrees to comply with any and all Small Business Economic Development Advocacy (SBEDA) goals assigned to this Agreement.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- a) All information, data or reports heretofore or hereafter provided to CITY in regards to this Agreement 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 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 affect its obligations hereunder.
- c) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE that impact performance under this Agreement.
- 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.

VII. ACCESSIBILITY OF RECORDS

7.1 At any time during normal business hours and as so often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all relevant 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.

7.2 GRANTEE agrees and represents that it will reasonably 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.

VIII. MONITORING AND EVALUATION

8.1 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.

IX. INSURANCE

9.1 GRANTEE shall be responsible for insuring their own Property, Equipment, Autos and Legal Liability, In no event shall the CITY be required to maintain any insurance coverage for the GRANTEE or held liable for the actions or injuries whether it be property or bodily as result caused by the contracted. In no way is the CITY liable for any monies given or to be held responsible for anything the monies are used for.

X. INDEMNIFICATION

10.1 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.

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. 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.

XI. NON-DISCRIMINATION

11.1 As 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 exempt by state or federal law, or as otherwise established herein.

XII. POLITICAL ACTIVITY

12.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, of 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.

XIII. CONTRACTING

13.1 Compliance by contractor 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.

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

XIV. CHANGES AND AMENDMENTS

14.1 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.

14.2 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 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.

XV. ASSIGNMENTS

15.1 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, an interest in and to same, or any claim arising thereunder, without first procuring the written approve of CITY. Any attempt to transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XVI. SEVERABILITY OF PROVISIONS

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 constructed as if such invalid, illegal or unenforceable clause or provisions 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.

XVII. DEFAULT

17.1 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.

17.2 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.

XVIII. NON-WAIVER OF PERFORMANCE

18.1 No waiver by wither Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be constructed 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 option herein contained, shall in no event be constructed as a waiver or relinquishment for the future or 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.

18.2 No act or omission of either part 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.

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

XIX. ENTIRE AGREEMENT

19.1 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 date hereof and duly executed by the Parties.

XX. NOTICES

20.1 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 of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283-3966

GRANTEE:
San Antonio Botanical Garden Society, Inc.
Attn: President
555 Funston
San Antonio, TX 78209

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, administrator, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXII. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or constructed 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 thereto.

XXIII. TEXAS LAW TO APPLY

23.1 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.

XXIV. GENDER

24.1 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.

XXV. CAPTIONS

25.1 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.

XXVI. LEGAL AUTHORITY

22.1 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 and 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2018.

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

SAN ANTONIO BOTANICAL GARDEN SOCIETY

By: _____
Xavier D. Urrutia, Director

By: _____
John Troy, President

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Scope of Work and Budget (to be negotiated)

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

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and San Antonio Parks Foundation (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation. GRANTEE and CITY shall collectively be referred to as "the Parties."

PREAMBLE

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

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

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

WHEREAS, \$100,000 has been approved in the City's FY 2019 adopted annual budget; and

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

1.1 This Agreement shall commence October 1, 2018 and terminate September 30, 2019, unless terminated sooner according to the terms herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.1 GRANTEE shall provide the services as outlined in the attached Exhibit A – Scope of Services.

III. FUNDING BY CITY

3.1 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 related to Exhibit A – Scope of Services. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$100,000.00.

IV. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

4.2 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.
- b) That GRANTEE'S record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

4.3 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.

4.4 Disbursement of funds shall be based upon invoices submitted by GRANTEE. Invoices shall be submitted no more than monthly and no less than twice per year. Subsequent to disbursement, GRANTEE shall provide CITY

with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.5 If necessary, GRANTEE may request an advance payment to partially offset GRANTEE'S expenses associated with the services outlined in Exhibit A – Scope of Services. If advance payments are requested, GRANTEE shall provide an advance payment request. Prior to the next payment request, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.6 Eligible expenses 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.

4.7 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.

4.8 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.

4.9 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out herein 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.

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

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.1 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, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors.

5.2 Grantee agrees to comply with any and all Small Business Economic Development Advocacy (SBEDA) goals assigned to this Agreement.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- a) All information, data or reports heretofore or hereafter provided to CITY in regards to this Agreement 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 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 affect its obligations hereunder.
- c) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE that impact performance under this Agreement.
- 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.

VII. ACCESSIBILITY OF RECORDS

7.1 At any time during normal business hours and as so often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all relevant 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.

7.2 GRANTEE agrees and represents that it will reasonably 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.

VIII. MONITORING AND EVALUATION

8.1 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.

IX. INSURANCE

9.1 GRANTEE shall be responsible for insuring their own Property, Equipment, Autos and Legal Liability, In no event shall the CITY be required to maintain any insurance coverage for the GRANTEE or held liable for the actions or injuries whether it be property or bodily as result caused by the contracted. In no way is the CITY liable for any monies given or to be held responsible for anything the monies are used for.

X. INDEMNIFICATION

10.1 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.

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. 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.

XI. NON-DISCRIMINATION

11.1 As 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 exempt by state or federal law, or as otherwise established herein.

XII. POLITICAL ACTIVITY

12.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, of 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.

XIII. CONTRACTING

13.1 Compliance by contractor 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.

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

XIV. CHANGES AND AMENDMENTS

14.1 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.

14.2 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 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.

XV. ASSIGNMENTS

15.1 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, an interest in and to same, or any claim arising thereunder, without first procuring the written approve of CITY. Any attempt to transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XVI. SEVERABILITY OF PROVISIONS

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 constructed as if such invalid, illegal or unenforceable clause or provisions 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.

XVII. DEFAULT

17.1 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.

17.2 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.

XVIII. NON-WAIVER OF PERFORMANCE

18.1 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be constructed 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 option herein contained, shall in no event be constructed as a waiver or relinquishment for the future or 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.

18.2 No act or omission of either part 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.

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

XIX. ENTIRE AGREEMENT

19.1 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 date hereof and duly executed by the Parties.

XX. NOTICES

20.1 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 of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283-3966

GRANTEE:
San Antonio Parks Foundation
400 N. St. Mary's, Suite 101
San Antonio, TX 78212

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, successors and assigns, except as otherwise expressly provided herein.

XXII. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or constructed 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 thereto.

XXIII. TEXAS LAW TO APPLY

23.1 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.

XXIV. GENDER

24.1 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.

XXV. CAPTIONS

25.1 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.

XXVI. LEGAL AUTHORITY

22.1 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 and 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2018.

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

SAN ANTONIO PARKS FOUNDATION

By: _____
Xavier D. Urrutia, Director

By: _____
Mary Jane Verette, President and CEO

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Scope of Work and Budget (to be negotiated)

NEC ENHANCEMENT MATCHING GRANT PROGRAM

GRANTEE AGREEMENT

PROPERTY AT: XXXX
PROJECT NUMBER NEC19-XXXX

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 Planning Department pursuant to Ordinance No. 2018-09-13-____, dated September 13, 2018, and XXXX (hereinafter referred to as "GRANTEE"), in connection with the subject property located at XXXX (hereinafter referred to as the "Property").

WHEREAS, CITY has earmarked \$500,000.00 in FY 2019 General funds to improve the marketability of the Perrin Beitel and Nacogdoches corridors that are included within the boundaries of the Northeast Corridor (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 Planning Department 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) DATE 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, **NAME, as TITLE for GRANTEE**, shall be responsible for the management of all contractual matters pertaining to this AGREEMENT.

2.3 CITY's Director of the Planning Department or his/her 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 Planning Department 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 "B") 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 GRANTEE shall not discriminate in GRANTEE's employment practices against any person because of race, color, creed, sex or origin. GRANTEE and its contractor and any subcontractor agrees that he/she/it 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 and the NEC Enhancement Grant Program Guidelines as described in GRANTEE's Project Application, shall manage, perform, and provide all of the activities and services set forth in the Project Scope of Work and Budget Detail attached hereto, and incorporated herein for all purposes as Exhibit "A," to CITY's satisfaction, utilizing only those funds available for utilization as described in the Budget Detail portion of Exhibit "A."

6.2 Modifications or alterations to Exhibit "A" may be made only pursuant to the prior written approval of CITY's Director of the Planning Department or his/her 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 Detail set forth in Exhibit "A" 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 sixty-seven percent (67%) of the lesser of a) the Project Cost as outlined in the Project Budget Detail (Exhibit "A"), or b) the actual Project Costs, provided however, in no event shall CITY pay GRANTEE an amount greater than \$XXXX [this is the "Reimbursement to Grantee" amount on the Budget Detail].

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 Detail (Exhibit "A").

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 Detail as set forth in Exhibit "A," 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 Planning Department or his/her 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 Scope of Work and Budget Detail 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 Planning Department, which shall be clearly labeled "ADDRESS of GRANT PROPERTY" 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 Planning 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) 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:	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;
a. Premises/Operations	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
*b. Independent Contractors	
c. Products/Completed Operations	
d. Personal Injury	
e. Contractual Liability	
f. Damage to property rented by you	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: Planning Department
 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 Scope of Work and Budget Detail, 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 Scope of Work and Budget Detail (Exhibit "A"). 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 Detail set forth as Exhibit "A." 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 "A."

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 arm’s 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
Planning Department
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Director

GRANTEE:

XXXXXXXX

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.

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.

This Agreement has been fully executed as of the date of signature of the last party to sign.

CITY OF SAN ANTONIO,
a Texas municipal corporation

GRANTEE:

XXXXXX

By: _____
Bridgett White, Director
Planning Department

By: _____
Authorized Grantee Signatory

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Shreya Shah
Assistant City Attorney

Attachments:

Exhibit "A" – Project Scope of Work and Budget Detail

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

COVENANT AND AGREEMENT

This COVENANT AND 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 Planning Department and [REDACTED], owner ("OWNER") of subject property (hereinafter described).

WHEREAS, the San Antonio City Council has designated certain neighborhood commercial districts as target areas for receipt of commercial revitalization assistance; and

WHEREAS, as part of the commercial revitalization, CITY approved expenditure of funds for the "NEC Enhancement Matching Grant Program" (the "Program"); and

WHEREAS, the property located at [REDACTED], San Antonio, Bexar County, Texas 78[REDACTED] ("Property") has been approved for assistance ("Project") as a part of the Program; and

WHEREAS, in connection with said assistance, CITY has required execution of the instant Agreement; **NOW THEREFORE:**

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the following:

For and in consideration of CITY's award of sixty-seven percent (67%) of the lesser of (a) the Project cost as outlined in the Project budget, or (b) the actual Project cost, to fund improvements located at the Property (more particularly described in the attached Exhibit "A") in which fee title is held in the name of OWNER, OWNER agrees to the condition that the Property will be maintained in a condition of good repair, and shall be preserved in its renovated and improved state and shall be kept from failure or decline. OWNER acknowledges OWNER's duty to maintain the Property for commercial use. OWNER shall comply with the City of San Antonio Unified Development Code Sections 35-310.08 through 35-310.14.

Further, OWNER hereby covenants and agrees that CITY shall be allowed to inspect said Property at any and all times deemed necessary by CITY to verify that the maintenance of said Property is in compliance with the foregoing condition. Said conditions shall act as covenants running with the land and shall be binding on OWNER and OWNER's successors in title for a period of five (5) years following the execution of this Agreement. OWNER and OWNER's successors and assigns further understand and agree that CITY shall file the instant document for record in the Deed and Plat Records of Bexar County, Texas.


This Agreement has been fully executed as of the date of signature of the last party to sign.

CITY OF SAN ANTONIO,
a Texas municipal corporation

OWNER



By: _____
Bridgett White, Director
Planning Department

By: _____


APPROVED AS TO FORM:

By: _____
Shreya Shah
Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
 COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, 2018 by Bridgett White, Director of the Planning Department of the City of San Antonio, a Texas municipal corporation, on behalf of said corporation.

 NOTARY PUBLIC IN AND FOR THE
 STATE OF TEXAS

STATE OF _____ §
 §
 COUNTY OF _____ §

[IF OWNER IS A BUSINESS ENTITY]

This instrument was acknowledged before me on the _____ day of _____, by [insert name _____], [insert title _____] of [insert owner entity _____], on behalf of said entity.

[IF OWNER IS AN INDIVIDUAL]

This instrument was acknowledged before me on the _____ day of _____, 2018, by [insert name _____], owner of the Property.

 NOTARY PUBLIC IN AND FOR THE
 STATE OF _____

AFTER RECORDING, RETURN TO:

City of San Antonio
 Office of the City Attorney
 ATTN: Shreya Shah
 P.O. Box 839966
 San Antonio, TX 78283-3966

Exhibit “A”

[MODIFY AS NECESSARY]

Lot X, Block XX, New City Block XXX, XXXX, in the City of San Antonio, Bexar County, Texas, according to the map or plat thereof recorded in Volume XXX, Page XXX, the Deed and Plat Records of Bexar County, Texas, and more commonly known as XXX (location of grant property)

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, 2018 and terminate on September 30, 2019.

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."

3.2 In addition to those tasks identified in SAEDC's FY2019 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 and leveraging opportunities, conducting studies and developing strategies for assisting startup companies in the City's targeted industries and building a viable startup ecosystem.
- 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 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.
- D. 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 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 Visit San Antonio and the 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.

3.3 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 2019 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 to be paid for with City funds 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. The City recognizes that the SAEDC may raise additional funding through third party contributions or grants to cover additional expenses and projects approved by the SAEDC Board and by City Council if required.

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 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 AM. 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.

XVI. 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:

XXVI. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

26.1 The following provisions shall only apply to Grantee in the event that it meets the definition of Company found below:

26.2 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

26.3 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

26.4 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company,

including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

26.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXVIII. 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 _____, 2018.

CITY:

SAEDC:

Assistant City Manager

Ed Davis
Executive Director

Approved as to Form:

City Attorney

EXHIBIT A: SAEDC FY2019 ANNUAL BUDGET

SERVICES AGREEMENT BETWEEN THE ECONOMIC DEVELOPMENT FOUNDATION AND CITY OF SAN ANTONIO

City Council of City OF SAN ANTONIO, TEXAS, a municipal corporation (the “**City**”), has approved City’s engagement of the SAN ANTONIO ECONOMIC DEVELOPMENT FOUNDATION (“**SAEDF**”), a Texas non-profit corporation (combined, the “**Parties**”), to provide the “**Services**” (as defined below) set forth in this Services Agreement (“**Agreement**”).

RECITALS

WHEREAS, in 2008, as part of an effort to improve corporate retention and recruitment, City formed a Corporate Retention and Recruitment Committee (the “**Committee**”) to develop a plan for the strategic development of San Antonio's economy, with a narrowed focus on developing recommendations for a more robust economic development structure that included a community-wide, long-range vision and strategic plan; and

WHEREAS, the Committee’s recommendations were presented to and accepted by City Council on December 10, 2009; and

WHEREAS, City staff was directed to continue efforts toward implementation of the recommendations, including entering into an agreement with a third-party contractor to provide certain defined services for City, including services relating to business recruiting and retention, image building, and market research functions; and

WHEREAS, in accordance with the SA Tomorrow Comprehensive Plan, Jobs and Economic Competitiveness Policy Area as set forth in the Forefront SA Business Plan (see attached as **Exhibit “A”**), SAEDF is the third-party contractor that will be the master convener for San Antonio’s economic and workforce development initiatives, propelling our community to an economically healthy and prosperous future; and

WHEREAS, SAEDF is a private, non-profit organization that assists businesses relocating or expanding into the San Antonio area; and

WHEREAS, SAEDF is a respected leader in the highly-competitive industry of corporate recruitment, whose activities and services include direct marketing, site selection, market research assistance, and other economic development activities; and

WHEREAS, SAEDF has achieved significant success in providing services similar to the Services to its other constituents; and

WHEREAS, pursuant to this Agreement, City is engaging SAEDF to perform the Services (as defined below); and

WHEREAS, SAEDF’s provision of the Services is expected to contribute to the achievement of the goals stated above; and

WHEREAS, City understands the importance of the SAEDF mission, especially in the area of recruiting new business to the San Antonio area, of maintaining a high level of

confidentiality, and accepts that much of the information pertaining to prospects who are considering a location here is private and proprietary, and must be protected, and City will work with SAEDF to maintain that confidentiality.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, City and SAEDF agree as follows:

I. TERM

- 1.1 **Term.** The term of this Agreement shall commence on October 1, 2018, and will remain in full force and effect through December 31, 2020 (“***Term***”) unless sooner terminated, as provided below.

II. SCOPE OF SERVICES

2.1 **Services for Compensation.** SAEDF agrees to provide the services described in the attached Forefront SA Business Plan in exchange for the compensation described hereafter (as listed in **Section 2.2**, the “***Services***”). City acknowledges that SAEDF contracts with various entities and organizations unaffiliated with City, and that under those agreements SAEDF may perform services and activities in areas outside of the San Antonio Region (as defined in the attached **Exhibit “B”**). However, the Parties have agreed that funds provided by City through this Agreement will be used for activities within City limits of City and its extraterritorial jurisdiction.

2.1.1 This agreement does not preclude SAEDF from subcontracting with SA Talent, Inc. d/b/a SAWorks for a separate workforce development-related scope of service.

2.1.2 SA Talent may subcontract services within the workforce development-related scope of service.

2.2 **Scope of Services.** SAEDF shall work to enhance public- and private-sector collaboration towards development and execution of strategies to increase the number and quality of jobs and capital investment in the San Antonio Region in accordance with the Forefront SA Business Plans. SAEDF shall agree to follow the Forefront SA Business Plans as follows:

2.2.1 Forefront SA Business Plan: 2018 (as adopted in January 2018 and as attached as **Exhibit “A”**), shall continue to be utilized from October 1, 2018 through December 31, 2018.

2.2.1.a First Amended 2018 Forefront SA Business Plan (“***First Amended Plan***”) to include a supplemental international business development plan shall be effective from October 1, 2018 through December 31, 2018.

2.2.1.b Second Amended 2018 Forefront SA Business Plan (“***Second Amended Plan***”) to include supplemental workforce development plan shall be effective from October 1, 2018 through December 31, 2018.

2.2.2 City and SAEDF shall agree upon the scope and execution thereof of a 2019

Forefront SA Business Plan by December 2018. The 2019 Forefront SA Business Plan shall be effective from January 1, 2019 through December 31, 2019, contingent upon City Council approval, as evidenced by passage of an ordinance.

2.2.3 City and SAEDF shall agree upon the scope and execution thereof of a 2020 Forefront SA Business Plan by December 2019. The 2020 Forefront SA Business Plan shall be effective from January 1, 2020 through December 31, 2020, contingent upon City Council approval, as evidenced by passage of an ordinance.

2.3 Forefront SA Business Plans

a. Development. No later than September 30, 2018, SAEDF and City shall agree upon and shall attach hereto the Amendments to the 2018 Forefront SA Business Plan. City and SAEDF shall work jointly to finalize the 2019 Forefront SA Business Plan and the 2020 Forefront SA Business Plan.

(i) The 2018 Forefront SA Business Plan shall become incorporated into this Agreement as **Exhibit "A"**.

(ii) The First Amended 2018 Forefront SA Business Plan shall become incorporated into this Agreement as **Exhibit "C"**.

(iii) The Second Amended 2018 Forefront SA Business Plan shall become incorporated into this Agreement as **Exhibit "D"**.

(iv) After approval by each respective board or sub-committee, the 2019 Forefront SA Business Plan shall become incorporated into this Agreement as **Exhibit "E"**.

(v) After approval by each respective board or sub-committee, the 2020 Forefront SA Business Plan shall become incorporated into this Agreement as **Exhibit "F"**.

The Parties understand that circumstances during any period of time may differ from those contemplated when a business plan is established; however, any material changes to the approved Forefront SA Business Plans must be approved in writing by SAEDF and City.

b. Forefront SA Business Plans Performance Targets. As part of the development of the Forefront SA Business Plans, City and SAEDF shall establish "Performance Targets" against which SAEDF's execution of the Forefront SA Business Plans is evaluated. If there are changing market conditions, funding availability issues, unforeseen expenses, or other circumstances beyond SAEDF's reasonable control, then the current Performance Targets may be revised, with City's written approval.

c. Reporting. As set forth in the Forefront SA Business Plans, SAEDF shall maintain reasonable levels of communication with City staff throughout the term of this Agreement. SAEDF shall provide, upon reasonable request, reports to City discussing in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters) its progress in implementing the Forefront SA Business Plans and meeting Performance Targets, as specified in this Agreement, as well as reporting on any activity that SAEDF believes to be of interest to City. SAEDF shall respond within 30 days of that reasonable request. In addition, SAEDF agrees to provide to City the following:

(i) a monthly status report, which shall be provided during a monthly

meeting, informally and orally to staff;

- (ii) a quarterly digital file with all details of any reported aggregated metrics to include data fields requested by City staff based on reported activities;
- (iii) aligned and cohesive quarterly and annual written status reports and general accountings due no later than the end of each month following quarter end, and;
- (iv) on reasonable request of City, periodic update presentations that address the Services provided pursuant to this Agreement.

SAEDF's demonstrated need to maintain confidentiality shall take priority over any specific request for information made by City.

2.4 City's Satisfaction. All work performed by SAEDF hereunder shall be performed to the satisfaction of City. City shall have the right to terminate this Agreement, in accordance with Article VII entitled "Termination," in whole or in part, if SAEDF's work is not satisfactory to City, as determined by City in its discretion. Satisfaction may be based on a number of non-exclusive and non-dispositive factors, which may include quantitative and qualitative measures, the performance of specific activities, progress towards SAEDF's mission, expected outcomes, and analysis of overall economic development gains in the City.

III. COMPENSATION TO SAEDF

3.1 Compensation. As compensation for the Services, City shall pay to SAEDF the cumulative total up to, but not to exceed TWO MILLION SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$2,070,000.00). Payments shall not be due or owed until execution of this Agreement and of the Consulting Agreement between SAEDF and Hiroyuki Watanabe (a/k/a the Texas-Japan Office) and as specified in 3.1.1 through 3.1.3 below. Payments shall be subject to terms agreed to as follows:

3.1.1 Between October 1, 2018 and December 31, 2018. City shall disburse to SAEDF an amount up to, but not to exceed, \$167,500 provided the following has occurred:

- (A) Execution of this agreement;
- (B) Execution of First Amended Plan; and
- (C) Execution of Second Amended Plan.

3.1.2 For the period beginning January 1, 2019 and ending September 30, 2019. City shall disburse to SAEDF an amount up to, but not to exceed, \$752,500. Payments shall be made quarterly and shall be subject to terms outlined in the 2019 Forefront SA Business Plan, provided the following has occurred:

- (A) City Council approval of Agreement funding for fiscal year 2019;
- (B) Execution by the Parties of the 2019 Forefront SA Business Plan as detailed in Article II, section 2.2.2 and section 2.3; and
- (C) SAEDF's satisfactory performance of the 2019 Forefront SA Business Plan, at City's sole discretion.

3.1.3 For the period beginning October 1, 2019 and ending December 31, 2020. CITY shall disburse to SAEDF an amount up to, but not to exceed, \$1,150,000. Payments shall be made quarterly and shall be subject to terms outlined in the 2020 Forefront SA Business Plan provided the following has occurred:

- (A) City Council approval of Agreement funding for fiscal year 2020;
- (B) Execution by the Parties of the 2020 Forefront SA Business Plan as detailed in Article II, section 2.2.3 and section 2.3; and
- (C) SAEDF's satisfactory performance of the 2020 Forefront SA Business Plan, at City's sole discretion.

No additional fees or expenses of SAEDF shall be charged by SAEDF nor shall be payable by City for the Services provided under this Agreement. The parties hereby agree that all expenses of SAEDF that are compensable by City have been provided for in the total payment to SAEDF. Those total payments cannot exceed the amount set forth above, without prior approval and agreement of all Parties, as evidenced in writing and as approved by the City Council, as evidenced by passage of an ordinance.

3.2 Use of Funds. The funds provided by City under this Agreement shall be used solely in connection with SAEDF's Services described in Article II, pursuant to the budget prepared as part of the approved Forefront SA Business Plan. SAEDF shall segregate all funds provided under this Agreement into a separate account and shall not commingle any funds supplied by City with the SAEDF's general funds or with other funds received by any other entity.

3.3 Additional Services. Should any additional services outside the scope of this Agreement be requested and authorized by City, and accepted by SAEDF, SAEDF shall be separately compensated for those services over and above the compensation discussed in this Article III, at an amount agreed to by City and SAEDF.

3.4.1 Invoices. SAEDF shall submit [post](#)-quarterly invoices to:

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

3.4.2 Subject to terms set out in sections 3.1, 3.2 and 3.3, City shall pay SAEDF invoices within [30 days] of receipt.

IV. AUDIT

4.1 SAEDF's Audit. In accordance with its standard practices, SAEDF shall obtain an annual audit conducted by an independent auditing firm during the Term of this Agreement. The audit shall include an audit of the separate account maintained to receive and to disburse funds provided by City to SAEDF pursuant to this Agreement. A copy of the audit report and management letter prepared as a result of the audit shall be provided to City.

4.2 City's Audit. City or its authorized representative shall, at all reasonable times, on five business days' prior written notice, have the right to examine, inspect, and audit all books, papers, and bank records of SAEDF directly related to the funds provided to SAEDF under this Agreement to determine the accuracy of reports made under this Agreement. expenses incurred by City incident thereto shall be the sole responsibility of and borne by City. Those records shall be maintained by SAEDF for a period of four (4) years after the termination of the Term of this Agreement and any applicable renewal term, and shall be made available for inspection and/or for audit by City or its agents at SAEDF's facility. Nothing in this Agreement shall be deemed to give City authority to direct, to question, to review, to audit, or otherwise to influence the expenditure of any funds that are not directly paid to SAEDF by City.

4.3 Dispute Findings. Either SAEDF or City may dispute the findings of audits performed under this Agreement, by giving written notice to the other Party within thirty (30) days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

4.4 Scope. City recognizes that SAEDF provides services to various entities and organizations unaffiliated with City and City's interest in SAEDF's activities is solely based upon the Services provided pursuant to this Agreement. Therefore, any audits, reports or information requested by City are understood to be limited in scope to the funding provided to SAEDF by City under the terms and conditions of this Agreement; provided, however, that no audit pursuant to this Article IV will identify any potential prospect or company by name or in enough detail for the identity to be discovered, nor shall any audit reveal or disclose any of SAEDF's proprietary information or trade secrets.

V. DOCUMENTS

5.1 Documents. **The Parties recognize that, to be successful, SAEDF depends on its ability to keep confidential the identity of its prospects and other proprietary information, and that SAEDF would not achieve the same level of results from providing the Services, or any other services to its other clients and constituents, without being able to maintain that confidentiality. Accordingly, the Parties acknowledge that certain writings, documents or information produced by or submitted to SAEDF in the course of its execution of the Services will be the sole property of SAEDF, are proprietary, and may be privileged under State law. Without waiving any available claim or privilege, SAEDF will in good faith share information derived from those writings or documents with City and, if any writings, documents or information are deemed non-proprietary or non-privileged, provide copies of those writings or documents to City. SAEDF understands and acknowledges that City has the right to use those non-proprietary writings, documents and information as City desires, without restriction. If any "open records" or equivalent request is made of City relating to this Agreement or to the Services, City shall promptly advise SAEDF, and the Parties shall work cooperatively and in good faith to preserve SAEDF's trade secrets, proprietary documents, and confidential information. In all events, City shall not provide any information or documents that SAEDF considers proprietary to any third party without SAEDF's written consent, unless City is legally obligated to do so and so advises SAEDF in writing. In addition, any third-party requests to SAEDF for records relating**

to this Agreement under the State's Public Information Act shall be coordinated with City. City shall provide SAEDF, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the State Attorney General.

5.2 Documents to City. Upon expiration or termination of this Agreement, SAEDF shall transfer to City true and correct copies of any non-proprietary writings, documents or information in the possession of SAEDF and produced pursuant to the terms and conditions of this Agreement.

VI. RECORDS RETENTION

6.1 Records. SAEDF and its subcontractors, if any, shall maintain all documents, papers, and records, and other evidence pertaining to the Services and funding provided for in this Agreement, and shall make such documents available to City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period for purposes of the audit described in Article IV.

6.2 Retention. SAEDF shall retain any and all documents produced as a result of services or of funding provided hereunder for a period of four (4) years from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or there are other questions arising from, involving or concerning this documentation or concerning the services provided hereunder, SAEDF shall retain the records until the resolution of such litigation or other such questions.

VII. SUSPENSION/TERMINATION

7.1 Suspension. City may summarily suspend this Agreement if it reasonably believes that SAEDF has breached this Agreement in any material way, including by violating any City, State or Federal laws. City shall promptly apprise SAEDF of the basis of City's reasonable belief. Any such suspension shall remain in effect until City determines that appropriate measures have been taken to ensure SAEDF's future compliance. Grounds for such suspension include, but are not limited to the following:

7.1.1 Failure to abide by any terms or conditions of this Agreement;

7.1.2 Failure to keep and to maintain adequate proof of insurance as required by this Agreement;

7.1.3 The commission or alleged commission of any crime by SAEDF, or by any owner, part owner, partner, business associate, principal party, officer, or director.

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

7.3 Termination Without Cause. This Agreement may be terminated by either Party upon sixty (60) calendar days' written notice, which notice shall be provided in accordance with

Article VIII. Notice.

7.4 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:

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

7.4.2 The cessation of operations for a period of time exceeding twenty (20) days;

7.4.3 The expenditure of City funds on gratuities in the form of entertainment, gifts, or otherwise offered or given by SAEDF, or any agent or representative of SAEDF, to any officer or employee of City, County, State or business prospect with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract.

7.4.4 SAEDF's involvement in litigation against City as discussed in section 14.2

7.4.5 SAEDF's breach of section 26.4 or of Article XXVII relating to contracts with companies boycotting Israel or engaged in certain business.

7.5 Defaults With Opportunity for Cure. Should SAEDF default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of the default, specifying in detail the matter(s) in default. SAEDF shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAEDF fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice and without adoption of a City ordinance, to terminate this Agreement in whole or in part as City deems appropriate. The following actions are defaults that may be cured by SAEDF:

7.5.1 Performing unsatisfactorily, in the sole discretion of City;

7.5.2 Failing to perform or failing to comply with any covenant herein required in sole discretion of City; and

7.5.3 Entering into bankruptcy or selling substantially all of company's assets,

7.6 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.

7.7 Ceasing City Activity. Upon the effective date of expiration or termination of this Agreement, SAEDF shall cease all work being performed by SAEDF or by any of its subcontractors on behalf of City.

7.8 Transition Period. Regardless of the method by which this Agreement is terminated, SAEDF agrees to provide a transition period of termination for a period not to exceed two (2) months upon City's request and at City's sole discretion. During such transition period, SAEDF may continue to provide services as provided for, and for which it will be compensated, under this Agreement.

VIII. NOTICE

8.1 Written Notice. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

<p><u>If to City:</u> Rene Dominguez EDD Director City of San Antonio Development Foundation P.O. Box 839966 San Antonio, TX 78283-3966 Phone: 210-207-8080 Fax: 210-207-8151</p>	<p><u>If to SAEDF:</u> Jenna Saucedo-Herrera President & CEO San Antonio Economic 112 E. Pecan, Suite 2635 San Antonio, TX 78205 Phone: 210-226-1394</p>
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8.2 Time. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either Party may change its mailing address or the person to receive notice by notifying the other Party as provided in this paragraph.

IX. INSURANCE

9.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, SAEDF shall furnish an original completed Certificate(s) of Insurance to City Economic Development Department and to City Clerk's Office, and which shall be clearly labeled "Economic Development Foundation" 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 must be mailed directly from the agent to City. City shall have no duty to pay or to perform under this Agreement until such certificate shall have been delivered to City Economic Development Department and to City Clerk's Office, and no officer or employee, other than City Risk Manager, shall have authority to waive this requirement.

9.2 Right to Review. City reserves the right to review the insurance requirements of this Article during the Term of this Agreement 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.

9.3 Financial Integrity. SAEDF's financial integrity is of interest to City; therefore, subject to SAEDF's right to maintain reasonable deductibles in such amounts as are approved by City, SAEDF shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAEDF'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>AMOUNTS</u>
1. Workers' compensation	Statutory
2. Employers' liability	\$500,000/\$500,000/\$500,000
3. 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 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
4. Business automobile liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence

9.4 Copies. 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 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 upon the underwriter of any such policies). So long as this Agreement is in effect, SAEDF 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 9.6 herein within 10 days of the requested change. SAEDF shall pay any costs incurred resulting from said changes.

9.5 Required Provisions. SAEDF agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name City and its officers, employees, volunteers, and elected representatives as additional insureds as respects 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 City of San Antonio where City is an additional insured shown on the policy; and
- Provide a waiver of subrogation in favor of City workers’ compensation and employers’ liability policies.

9.6 Cancellation/Non-Renewal. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, SAEDF shall notify City of such and shall give such notice not less than thirty (30) days prior to the change, if SAEDF knows of said change in advance, or ten (10) days after the change, if SAEDF 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 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

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

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

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

X. INDEMNIFICATION

10.1 SAEDF covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and the elected officials, employees, officers, directors, and representatives of City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City arising out of or resulting from SAEDF activities under this Agreement, including any acts or omissions of SAEDF, any agent, officer, director, representative, employee of SAEDF or of any subcontractor of SAEDF, 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 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 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 are not intended to create or to grant any rights, contractual or otherwise, to any other person or entity. SAEDF shall advise City in writing within three business days of any claim or demand against City or SAEDF known to SAEDF related to or arising out of SAEDF's activities under this Agreement and shall see to the investigation and defense of such claim or demand at SAEDF's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAEDF of any of its obligations under this paragraph.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Qualified Personnel. SAEDF shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to Services pursuant to this Agreement shall be employees or subcontractors of SAEDF.

11.2 Subcontractors. SAEDF shall identify in its annual budget submitted to City any subcontractors that SAEDF intends to use to provide Services under this Agreement. On the approval of the annual budget, the subcontractors identified in it are deemed approved by City. Any subcontracts that arise during the year that have an annual subcontracted value in excess of \$20,000.00 and that are not included in the budget, must be approved by City.

11.3 Written Agreement. Any Services subcontracted by SAEDF hereunder with an annual value in excess of \$100,000.00 shall be 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 SAEDF. City shall in no event be obligated to any third party, including any subcontractor of SAEDF, for performance of Services or for payment of fees.

XII. INDEPENDENT CONTRACTOR

SAEDF and City covenant and agree that SAEDF is an independent contractor and not an officer, agent, servant or employee of City; that SAEDF shall have control of and right to control, in its sole discretion, the details of the Services performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and SAEDF; that the doctrine of respondent superior shall not apply as between City and SAEDF, its officers, agents, employees, contractors, subcontractors and SAEDF, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and SAEDF. 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 SAEDF under this Agreement and that SAEDF has no authority to bind City.

XIII. CONFLICT OF INTEREST

13.1 City's Ethics Code. SAEDF acknowledges that it is informed that the Charter of 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.

13.2 The Executive Committee of SAEDF shall comply with the Conflicts of Interest Policy set out in Exhibit "G."

XIV. LEGAL/LITIGATION EXPENSES

14.1 Litigation Against City. Under no circumstances will the funds received under this Agreement or any other funds received from City be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City.

14.2 Termination. During the term of this Agreement, if SAEDF files and/or pursues an adversarial proceeding against City, at City's option, this Agreement and all access to the funding provided for hereunder may terminate if it is found that SAEDF has violated this Article.

XV. 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 Parties, and subject to approval by City Council, as evidenced by passage of an ordinance.

XVI. 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 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 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.

XVII. LICENSES/CERTIFICATIONS

SAEDF warrants and certifies that, to its knowledge, 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.

XVIII. COMPLIANCE WITH LAWS

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

XIX. 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 as a relinquishment for the future of such covenant or option.

XX. LAW APPLICABLE

20.1 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.

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

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

XXIV. 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: Forefront SA Business Plan: 2018

EXHIBIT B: Map of City Limits and ETJ

EXHIBIT C: First Amendment to the 2018 Forefront SA Business Plan

EXHIBIT D: Second Amendment to the 2018 Forefront SA Business Plan

EXHIBIT E: 2019 Forefront SA Business Plan (to be added pursuant to this Agreement)

EXHIBIT F: 2020 Forefront SA Business Plan (to be added pursuant to this Agreement)

EXHIBIT G: SAEDF Conflict of Interest Policy

EXHIBIT H: SAEDF Acknowledgment of Conflict of Interest Policy

XXV. 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 XV. Amendments.

XXVI. PROHIBITION AGAINST CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 26.1** Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.
- 26.2** "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 26.3** "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 26.4** By submitting an offer to or by executing contract documents with City, SAEDF hereby

verifies that it does not boycott Israel, and will not boycott Israel during the Term of this Agreement. City's hereby relies on SAEDF's verification. If found to be false, City may terminate this Agreement for material breach.

**XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN
BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. SAEDF hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on SAEDF's certification. If found to be false, or if SAEDF is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement this ____ day of _____, 201__.

CITY OF SAN ANTONIO, TEXAS,

A Municipal Corporation

**SAN ANTONIO ECONOMIC
DEVELOPMENT**

FOUNDATION

A Texas Nonprofit Corporation

Sheryl L. Sculley
City Manager

Jenna Saucedo-Herrera
President & CEO

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A:

Forefront SA Business Plan: 2018

EXHIBIT B:

Map of City Limits and ETJ

STATE OF TEXAS	§	FUNDING AGREEMENT
	§	WITH
COUNTY OF BEXAR	§	BEXAR LAND TRUST, INC. dba
		GREEN SPACE ALLIANCE OF SOUTH TEXAS

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Bexar Land Trust, Inc. dba Green Space Alliance of South Texas (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation. GRANTEE and CITY shall collectively be referred to as "the Parties."

PREAMBLE

WHEREAS, GRANTEE'S mission is to sustain the natural environment and enhance urban spaces through land conservation, community engagement, and education; and

WHEREAS, GRANTEE continues to identify and implement opportunities to enhance and expand the community garden program; and

WHEREAS, \$50,000 has been approved in the City's FY 2019 adopted annual budget; and

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

1.1 This Agreement shall commence October 1, 2018 and terminate September 30, 2019, unless terminated sooner according to the terms herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.1 GRANTEE shall provide the services as outlined in the attached Exhibit A – Scope of Services.

III. FUNDING BY CITY

3.1 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 related to Exhibit A – Scope of Services. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$50,000.00.

IV. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

4.2 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.
- b) That GRANTEE'S record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

4.3 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.

4.4 Disbursement of funds shall be based upon invoices submitted by GRANTEE. Invoices shall be submitted no more than monthly and no less than twice per year. Subsequent to disbursement, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.5 If necessary, GRANTEE may request an advance payment to partially offset GRANTEE'S expenses associated with the services outlined in Exhibit A – Scope of Services. If advance payments are requested,

GRANTEE shall provide an advance payment request. Prior to the next payment request, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.6 Eligible expenses 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.

4.7 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.

4.8 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.

4.9 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out herein 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.

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

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.1 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, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors.

5.2 Grantee agrees to comply with any and all Small Business Economic Development Advocacy (SBEDA) goals assigned to this Agreement.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- a) All information, data or reports heretofore or hereafter provided to CITY in regards to this Agreement 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 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 affect its obligations hereunder.
- c) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE that impact performance under this Agreement.
- 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.

VII. ACCESSIBILITY OF RECORDS

7.1 At any time during normal business hours and as so often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all relevant 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.

7.2 GRANTEE agrees and represents that it will reasonably 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.

VIII. MONITORING AND EVALUATION

8.1 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.

IX. INSURANCE

9.1 GRANTEE shall be responsible for insuring their own Property, Equipment, Autos and Legal Liability, In no event shall the CITY be required to maintain any insurance coverage for the GRANTEE or held liable for the actions or injuries whether it be property or bodily as result caused by the contracted. In no way is the CITY liable for any monies given or to be held responsible for anything the monies are used for.

X. INDEMNIFICATION

10.1 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.

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. 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.

XI. NON-DISCRIMINATION

11.1 As 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 exempt by state or federal law, or as otherwise established herein.

XII. POLITICAL ACTIVITY

12.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, of 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.

XIII. CONTRACTING

13.1 Compliance by contractor 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.

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

XIV. CHANGES AND AMENDMENTS

14.1 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.

14.2 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 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.

XV. ASSIGNMENTS

15.1 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, an interest in and to same, or any claim arising thereunder, without first procuring the written approve of CITY. Any attempt to transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XVI. SEVERABILITY OF PROVISIONS

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 constructed as if such invalid, illegal or unenforceable clause or provisions 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.

XVII. DEFAULT

17.1 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.

17.2 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.

XVIII. NON-WAIVER OF PERFORMANCE

18.1 No waiver by wither Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be constructed 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 option herein contained, shall in no event be constructed as a waiver or relinquishment for the future or 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.

18.2 No act or omission of either part 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.

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

XIX. ENTIRE AGREEMENT

19.1 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 date hereof and duly executed by the Parties.

XX. NOTICES

20.1 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 of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283

Bexar Land Trust, Inc. dba
Green Space Alliance of South Texas
Attn: Executive Director
P.O. Box 15275
San Antonio, TX 78212

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, administrator, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXII. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or constructed 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 thereto.

XXIII. TEXAS LAW TO APPLY

23.1 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.

XXIV. GENDER

24.1 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.

XXV. CAPTIONS

25.1 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.

XXVI. LEGAL AUTHORITY

22.1 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 and 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2018.

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

**BEXAR LAND TRUST, INC. dba
GREEN SPACE ALLIANCE OF SOUTH TEXAS**

By: _____
Xavier D. Urrutia, Director

By: _____
Tyler Sanderson, Interim Executive Director

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Scope of Work and Budget (to be negotiated)

FUNDING AGREEMENT FOR DREAMWEEK EVENT PLANNING AND COORDINATION

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 Director of the Department of Neighborhood and Housing Services and DreamVoice, L.L.C., by and through its President (hereinafter referred to as “DreamVoice”), 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.

“Director” shall mean the Director of City’s Department of Neighborhood and Housing Services.

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

“Event” shall mean “Dreamweek” to be held on January 11, 2018 through January 26, 2019

II. TERM

2.1 Unless sooner terminated in accordance with the provisions herein, the Term of this Agreement shall be from the date of execution to September 30, 2019. After such date, no payment will be made to DreamVoice.

2.2 Notwithstanding any other provisions of the Agreement, and in order to satisfy the requirements of the Constitution of the State of Texas, all covenants and commitments of City contained herein which would require the expenditure of funds by City are subject to and contingent upon the annual appropriation process. In the event City fails to appropriate sufficient funds dedicated to funding any such obligation of City, such a failure shall not be considered a default or breach hereunder and DreamVoice’s sole remedy for such failure shall be to terminate the Agreement.

III. SCOPE OF SERVICES

3.1 The Event is a city-wide summit that will inspire an exchange of ideas and promote solutions on universal issues facing our multi-cultural communities.

DreamWeek will consist of a series of keynote speaking engagements, luncheons, mixers, events and celebrations held throughout San Antonio. San Antonio hosts the country's largest MLK March, and DreamWeek is designed to enhance the experience and further the dream of Dr. Martin Luther King. The City is providing funding through this Agreement for the public purpose of supporting the Event as a catalyst for community pride.

3.2 DreamVoice agrees to provide the services and expend the funds to implement the services described in EXHIBIT A, entitled "Scope of Services", in exchange for the compensation described in Article IV, entitled "Compensation," below which is part of the City's contribution to the Event.

3.3 City shall provide DreamVoice with a reimbursement of costs associated with EXHIBIT A contingent upon DreamVoice providing documentation to City indicating purchases and payments for the services described in Exhibit A.

3.4 All work performed by DreamVoice 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 DreamVoice, 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 DreamVoice'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. PAYMENT TO DREAMVOICE

4.1 In consideration of DreamVoice's performance in a satisfactory and efficient manner, as determined solely by Director, of services and activities set forth in this Agreement, City agrees to reimburse DreamVoice an amount not to exceed ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00) for the purpose of undertaking and completing the Event and the Scope of Services as described in Exhibit A. It is understood that the amount reimbursed by City is not the entire amount required by the Scope of Services, however, it is the maximum amount to be contributed by City. DreamVoice shall be responsible for all other funding associated with the Event.

4.2 No additional fees or expenses of DreamVoice shall be charged by DreamVoice nor be payable by City. The parties hereby agree that all compensable expenses of DreamVoice have been provided for in the total payment to DreamVoice as specified in section 4.1 above. Total payments to DreamVoice 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 therefor.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to DreamVoice following

written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than DreamVoice, 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 DreamVoice 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 DreamVoice.

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

6.3 DreamVoice shall notify City, immediately, in the event DreamVoice receives any requests for information from a third party, which pertain to the documentation and records referenced herein. DreamVoice 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 sixty (60) 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.
- 7.3.2 Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony.

7.4 Defaults With Opportunity for Cure. Should DreamVoice 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. DreamVoice shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII., Notice, to cure such default. If DreamVoice fails to cure the default within such fifteen (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 entity 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 entity against DreamVoice'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 as determined by the Director.

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, DreamVoice shall effect 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 DreamVoice, or provided to DreamVoice, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by DreamVoice 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 DreamVoice's sole cost and expense. Payment of compensation due or to become due to DreamVoice 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, DreamVoice 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 DreamVoice 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 DreamVoice of any and all right or claims to collect moneys that DreamVoice 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, DreamVoice shall cease all operations of work being performed by DreamVoice 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 DreamVoice 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
Department of Neighborhood and
Housing Services
P.O. Box 839966
San Antonio, TX 78283

If intended for DreamVoice, to:

DreamVoice, L.L.C.
Attn: Shokare Nakpodia
1160 E. Commerce, Suite 200
San Antonio, TX 78205

IX. [Reserved]**X. INSURANCE**

10.1 Prior to the commencement of any work under this Agreement, DreamVoice shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Neighborhood and Housing Services which shall be clearly labeled "DreamWeek Event" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Neighborhood and Housing Services. 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. In no instance will City allow modification whereby City may incur increased risk.

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services

10.4 DreamVoice agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of DreamVoice herein, and provide a certificate of insurance and endorsement that names the DreamVoice and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of DreamVoice. DreamVoice 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.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. DreamVoice shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within ten (10) days. DreamVoice shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Department of Neighborhood and Housing Services
P.O. Box 839966
San Antonio, Texas 78283-3966

10.6 DreamVoice 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 or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

10.10 It is agreed that DreamVoice’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.

10.11 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.

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

XI. INDEMNIFICATION

11.1 DREAMVOICE 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 or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to DREAMVOICE's activities under this AGREEMENT, including any acts or omissions of DREAMVOICE, any agent, officer, director, representative, employee, consultant or subcontractor of DREAMVOICE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT DREAMVOICE 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. DREAMVOICE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or DREAMVOICE known to DREAMVOICE related to or arising out of DREAMVOICE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at DREAMVOICE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving DREAMVOICE of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by DREAMVOICE in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. DREAMVOICE 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 DREAMVOICE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and DREAMVOICE shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

XII. ASSIGNMENT AND SUBCONTRACTING

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

12.2 It is City's understanding and this Agreement is made in reliance thereon, that DreamVoice intends to use no subcontractors in the performance of this Agreement. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council (hereafter "City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

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 DreamVoice. City shall in no event be obligated to any third party, including any subcontractor of DreamVoice, 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, DreamVoice 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, DreamVoice shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor DreamVoice, 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 DreamVoice 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 DreamVoice 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 DreamVoice shall in no event release DreamVoice from any obligation under the terms of this Agreement, nor shall it relieve or release DreamVoice from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

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

XIV. SBEDA (RESERVED)

XV. CONFLICT OF INTEREST

15.1 DreamVoice 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 (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, DreamVoice 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. DreamVoice 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 DreamVoice, 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. LICENSES/CERTIFICATIONS

DreamVoice warrants and certifies that DreamVoice 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.

XIX. COMPLIANCE

DreamVoice 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.

21.3 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, DreamVoice, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Agreement. City hereby relies on DreamVoice's verification. If found to be false, City may terminate this Agreement for material breach.

21.4 As a party to this Agreement, DreamVoice 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. LEGAL AUTHORITY

The signer of this Agreement for DreamVoice represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of

DreamVoice and to bind DreamVoice 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: SCOPE OF SERVICES

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 8th day of August, 2018 (the “Effective Date”).

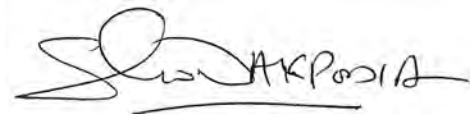
CITY:

DREAMVOICE:

CITY OF SAN ANTONIO

DREAMVOICE, L.L.C:

Verónica R. Soto, AICP, Director
Department of Neighborhood and
Housing Services



Shokare Nakpodia, Creative Director

Approved as to Form:

Assistant City Attorney

EXHIBIT A **SCOPE OF SERVICES**

MISSION:

DreamWeek's mission is to continue to advance and modernize the teachings set forth by Dr. Martin Luther King, Jr.'s vision by creating dialogue across cultures and communities.

WHEN:

Each year DreamWeek takes place in the week leading up to the country's largest MLK March. This year the summit will be held Friday, January 11 to Tuesday, January 26, 2019.

ADVANCING THE VOICES OF TOLERANCE, DIVERSITY & EQUALITY:

DreamWeek provides an environment for a global exchange of ideas through a series of keynote speaking engagements, mixers, workshops and celebrations that will foster discussions centered on universal issues. The summit will revolve around the following themes: City, Health, Youth, Environment, Technology, Education, Arts, Spirit, Justice, Business, Sports and Cuisine. Each event will inspire and motivate the community to action in creating a more tolerant and enlightened society.

As the world trends toward a more integrated landscape, there is a growing need for a vehicle to promote tolerance, interaction and exchange of ideas. Within this groundswell of emerging voices are ideas that may have a profound effect on the way we see our tomorrow, today. The power lies not in the activity of a rally or a mantra, but the interactions that lead to a greater knowledge of issues that touch our lives. San Antonio's quarter century status as host to the country's largest MLK March is proof that Dr. King's words and vision still live, and motivate.

SUPPORT TO MLK, JR. COMMISSION:

DreamVoice LLC may assist with wrap around design, marketing and promotional services, as needed, for the MLK Jr., Commission in the joint promotion of all official DreamWeek and MLK, Jr. Commission Commemorative events.

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 Greater San Antonio Chamber of Commerce (“GSACC”), both of which may be referred to herein collectively as the “Parties” or individually as a “Party”.

RECITALS

WHEREAS, GSACC is engaged in economic development activities; and

WHEREAS, GSACC is seeking economic incentives from the CITY to undertake and complete economic development activities as more specifically described in Exhibit A and attached hereto; and

WHEREAS, the CITY has identified funds to be made available to GSACC in the form of an 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 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:

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

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

“Director of Cybersecurity” shall mean the individual engaged by GSACC to provide the services set forth on Exhibit A attached hereto.

ARTICLE II. TERM

2.1 This Agreement shall become effective as of October 1, 2018, and shall remain in effect through September 30, 2019 (“Term”), unless otherwise terminated on an earlier date in accordance with the terms of this Agreement.

2.2 City may, in its sole discretion, exercise a one-year renewal option, beginning October 1, 2019 without the necessity of City Council approval, and subject to budgetary appropriation.

2.3 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.

ARTICLE III. SCOPE OF SERVICES

3.1 GSACC agrees to provide the services described below in exchange for the compensation described in Article IV of this Agreement.

3.1.1 GSACC agrees to provide a current job description for the Director of Cybersecurity (the “DCS”) and the Deputy Director of Cybersecurity (the “DDCS”). Both the DCS and DDCS will work directly for GSACC and perform the services as more particularly described in **Exhibit “A”** of this Agreement.

3.1.2 All Grant funds provided under this Agreement shall be used to fund the DCS and DDCS positions, ancillary costs associated with the position and any other expenses deemed appropriate and agreed to by the GSACC and the City to include but not be limited to additional staffing resources, consulting resources and training for staff retained under this agreement. In any event, administrative costs, and other expenses of GSACC associated with the DCS positions in total shall not exceed five percent (5%) the total Grant funds. All ancillary, administrative, and other associated expenses of GSACC associated with the DCS position shall be in kind contributions.

3.1.3 The DCS will be an employee of GSACC. City shall have the right to approve of the individual selected for the DCS position if any staffing changes are made. If staff changes are imminent City shall have the right to approve the individual selected for the DCS by GSACC.

3.2 GSACC agrees that the DCS shall work exclusively on Cybersecurity related issues including those that may be ancillary to such duties. City shall have the right to terminate this Agreement in whole or in part in accordance with Article VII, should GSACC’s work related to the position of DCS and the agreed upon work program outlined in Exhibit A to be unsatisfactory to City.

3.3 On or before September 30, 2018, the City and DCS 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 DCS shall work jointly to finalize the Exhibit A and after approval by each respective party, Exhibit A shall become incorporated into this Agreement.

ARTICLE IV. COMPENSATION TO GSACC

4.1 In consideration of the DCS performance in a satisfactory and efficient manner, City agrees to provide GSACC a grant for services and activities set forth in this Agreement, an amount not to exceed fifty thousand dollars and zero cents (\$50,000.00) ("Grant Funds"), to be paid to GSACC in full within thirty (30) business days of the receipt of an invoice from GSACC in a format satisfactory to City in its sole discretion. GSACC shall submit such invoice following final execution of this Agreement.

4.2 GSACC 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 GSACC services are unsatisfactory to City, as required by the terms of this Agreement, GSACC 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. For the purposes of this Agreement, "unsatisfactory work" shall mean a performance representing less than seventy percent (70%) of completion of any of the categories in the attached Exhibit "A" or any unaddressed performance issues formally presented in writing, invoking this section, and curable within 60 days ("Performance Recommendations"). Performance Recommendations are considered addressed upon receipt of a written response by the Director of Economic Development indicating cause of non-performance and whether performance will be met within 60 days.

4.3 No additional fees or expenses of GSACC shall be charged by GSACC nor be payable by City. The parties hereby agree that all compensable expenses of GSACC have been provided for in the total payment to GSACC as specified in section 4.1 above. Total payments to GSACC 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 GSACC, for the payment of any monies or the provision of any goods or services.

4.5 The GSACC 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 the economic development efforts undertaken by the GSACC as described in Exhibit "A". The Quarterly Progress Reports shall be submitted no later than the last calendar day of the month following the end of each full calendar quarter beginning in October 1, 2018 during the Term of this Agreement, in a mutually-acceptable format that details the GSACC's efforts in expanding the community's Cybersecurity industry, and shall include details on the Cybersecurity activities as described in Exhibit "A."

4.6 In addition, at the option of and on request of the City, representatives of the GSACC must provide a briefing to the San Antonio City Council during a scheduled public meeting, to

include discussion of the GSACC's efforts in expanding the community's Cybersecurity industry.

4.7 The payment of the fifty thousand dollars and zero cents (\$50,000.00) to GSACC pursuant to this Agreement is subject to GSACC securing matching funds from the public and private sector in the amount of at least fifty thousand dollars and zero cents (\$50,000.00) from the private sector for a total of one-hundred thousand dollars and zero cents (\$100,000.00) for the purpose of funding the DCS position and ancillary positions. In the event such matching funds are not raised by GSACC approximately by March 30, 2019, City may, in its sole discretion, terminate this Agreement and any Grant Funds paid to GSACC pursuant to this Agreement shall be immediately returned to City.

ARTICLE V. RECORDS RETENTION

5.1 GSACC 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 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.

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

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

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:

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

6.3.2 The unsatisfactory performance of The Director of Cybersecurity Cybersecurity in accordance with this Agreement.

6.4 Defaults With Opportunity for Cure. Should GSACC default in the performance of this Agreement in a manner stated in this Section 6.4 below, 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. GSACC shall have sixty (60) calendar days after receipt of the written notice, in accordance with Section 7.1, to cure such default. If GSACC 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.

6.4.1 Bankruptcy or selling substantially all of company's assets.

6.4.2 Failing to perform or failing to comply with any covenant herein required.

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

6.7 Upon the effective date of expiration or termination of this Agreement, GSACC shall cease all operations of work being performed by GSACC or any of its subcontractors pursuant to this Agreement. Provided however, such work may be continued to be performed by GSACC under any other agreement to which GSACC 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 GSACC 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
Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for GSACC, to:

San Antonio Chamber of Commerce
Attn: President & CEO
602 E. Commerce Street
San Antonio, Texas 78205

ARTICLE VIII. INDEMNITY

8.1 **GSACC 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 **GSACC 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 GSACC'S activities under this AGREEMENT, including any acts or omissions, or willful misconduct, of GSACC, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of GSACC, 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 GSACC of any of its obligations.

GSACC 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 GSACC 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 GSACC SHALL ADVISE THE CITY, IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF THE GSACC'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE GSACC'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.

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

ARTICLE IX. ASSIGNMENT AND SUBCONTRACTING

9.1 GSACC shall employ the DCS and DDCS positions in order to complete the work to be performed under this Agreement.

9.2 It is City's understanding and this Agreement is made in reliance thereon, that GSACC does not intend to use subcontractors in the performance of this Agreement unless agreed to by both parties in writing.

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 GSACC. City shall in no event be obligated to any third party, including any subcontractor of GSACC, 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, GSACC 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, GSACC shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor GSACC, 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 GSACC 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 GSACC 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 GSACC shall in no event release GSACC from any obligation under the terms of this Agreement, nor shall it relieve or release GSACC from the payment of any damages to City, which City sustains as a result of such violation.

ARTICLE X. INDEPENDENT CONTRACTOR

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

ARTICLE XI. NO REPRESENTATIONS

11.1 Neither GSACC 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 GSACC, 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 GSACC 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, GSACC 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. GSACC 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 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 GSACC, and subject to approval by the City Council, as evidenced by passage of an ordinance.

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 GSACC warrants and certifies that GSACC 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 GSACC 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 signer of this Agreement for GSACC represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of GSACC and to bind GSACC 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 As a condition of entering into this Agreement, GSACC represents and warrants that it will comply with the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance 2010-06-17-0531. As part of such compliance, GSACC 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 funded in whole or in part with Grant Funds made available under this Agreement, nor shall GSACC retaliate against any person for reporting instances of such discrimination. GSACC 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. GSACC 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 GSACC from participating in City contracts, or other sanctions as provided by applicable law. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

21.2 None of the performances rendered by GSACC under this Agreement shall involve, and no portion of the Incentives received by GSACC 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 GSACC shall, to the best of its knowledge and belief, include the substance of this Article in all agreements entered into by GSACC 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 GSACC 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 GSACC 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 GSACC, the GSACC is solely

responsible for compensation payable to any employee, contractor, or subcontractor of GSACC, and none of the GSACC'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 XIX.

ARTICLE XXVI. RESERVED

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel

during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

Signatures appear on next page.

Executed in triplicate each of which shall constitute an original this ____ day of _____, 2018 (the “Effective Date”).

CITY OF SAN ANTONIO

**GREATER SAN ANTONIO CHAMBER OF
COMMERCE**

Sheryl Sculley
City Manager or designee

Richard Perez
President & CEO

ATTEST/SEAL:

Leticia M. Vacek
City Clerk

Approved as to Form:

City Attorney

Exhibit A: Scope of Services

Contract #

STATE OF TEXAS *

COUNTY OF BEXAR * DELEGATE AGENCY CONTRACT

CITY OF SAN ANTONIO * WITH

 FAMILY SERVICE ASSOCIATION OF SAN ANTONIO, INC.

This Contract is between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Department of Human Services ("Managing City Department") pursuant to Ordinance No. 2018-09-13-_____, dated September 13, 2018, and the Family Service Association of San Antonio, Inc., ("Contractor") (together, the "Parties").

Background

- A. The City adopted a budget for the expenditure of City of San Antonio General or Grant Fund Operating funds ("General Fund" or "Grant Fund," as applicable), which included an allocation of funds for a project entitled "Child Abuse Prevention Services in District 5" ("Project"); and
- B. The City wishes to engage the Contractor to carry out the Project.

Contract

The Parties agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide, oversee and administer all activities and services in a manner satisfactory to the City and in compliance with the attached **Scope of Work** and **Scorecard** ("Attachment I").

II. TERM

- 2.1 This Contract shall begin on October 1, 2018 and shall terminate on September 30, 2019.

III. CONSIDERATION

- 3.1 The City will reimburse Contractor in an amount not to exceed \$130,000.00 for costs incurred in accordance with the attached **Budget** ("Attachment II"), and all subsequently authorized Budget Revisions or Budget Amendments to that Budget.

- 3.2 Funding through this Contract is based on an allocation from the following sources:

\$130,000.00 General Fund

Contractor shall comply with the attached **Funding Guide** ("Attachment III").

- 3.3 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 under this Contract. If the City does not receive sufficient funds to make payments pursuant to this Contract or if the award of Grant Funds is reduced, then City, at its sole discretion, may elect to terminate this Contract or reduce the Scope of Work and Compensation. City shall notify Contractor in writing of its determination within a reasonable time.
- 3.4 Contractor's total agency revenues and expenses derived from both non-City sources and from the City is deemed Contractor's Total Budget:

$$\text{Total Budget} = \text{non-City revenue/expenses} + \text{City Revenue/expenses}$$

The percentage of Total Budget derived from non-City sources must meet the following “match” requirements:

- (A) If Contractor receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then Contractor must obtain at least 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).
- (B) 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).

In addition, 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. City shall require sufficient information that Contractor’s match is in place before contract execution, and may request, at the end of each quarter, information and documentation confirming that Contractor has expended or is on course to expend its “match” requirement before the end of the Contract term. City has no obligation to provide any funds until Contractor demonstrates having secured or expended the required percentage of matching funds. Pell grants and other awards received by individuals, and in-kind contributions shall not count toward its matching fund requirements. If Contractor does not provide City with acceptable information and documentation that the required amount of non-City funds have been expended then City may reduce or recapture funds pursuant to Section 4.6 to comply with the match requirement. Contractor acknowledges that reduction or recapture of funds pursuant to Section 4.6 does not require the approval of City Council.

IV. COST REIMBURSEMENT; FISCAL RESPONSIBILITY

- 4.1 ***Allowable Costs*** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XI for the proper administration and performance of the services to be provided under this Contract.* The City’s payment obligation under this cost reimbursement Contract is limited to making reimbursements for Allowable Costs incurred as a direct result of City-funded services provided by the Contractor in accordance with this Contract and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Contract Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Contract Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- 4.2 **Advance payment.** In case of unforeseen or special circumstances, Contractor may submit to the Director of the Managing City Department, in the form prescribed by the City, a written request for advance payments, including the specific reason for such request no less than ten (10) business days before the requested date of payment. Each request will be considered by the Director of the Managing City Department on a case-by-case basis. The Director of the Managing City Department’s shall have sole discretion to approve or disapprove a request. If advance payments are approved then:
 - a. Contractor’s payments to its vendors using funds advanced by the City shall be paid in a prompt and timely manner but no later than 10 calendar days after the Contractor is notified that an advance payment has made available so long as services have been performed by the vendor.
 - b. Contractor must deposit advanced City funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If Contractor’s total deposits in the bank, including all City funds deposited with the bank, exceed the FDIC insurance limit, then the Contractor must arrange to automatically have the excess collaterally secured. Contractor must provide City a copy of the collateral agreement with the Contractor’s banking institution. Advanced funds that cause the Contractor’s account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). 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, in detail, expenditures made pursuant to this and all other City contracts.

- c. The City may, in its sole discretion, either 1) deduct pro rata from the remaining monthly reimbursements amounts necessary to offset the amount advanced, or 2) deduct from a single subsequent monthly reimbursement the full amount advanced to Contractor. The City will consider factors such as projected allowable costs and other pertinent 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's Request for Payment. Contractor shall submit to City no later than the 15th of every month a monthly Request for Payment in the form prescribed by City, which details:
- a. 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; and
 - b. supporting documentation of costs as may be required by the Director of the Managing City Department (e.g., original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses); and
 - c. the Program Income received or projected during the same time period.
- 4.4 City Payment. City shall pay for eligible expenses and undisputed amounts in submitted Requests for Payments within 30 calendar days of receiving a properly completed, documented and approved Request for Payment.
- 4.5 Final Request for Payment. The Contractor shall submit to City all final requests for payment no later than 30 days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department allowing Contractor to submit a request for payment after the 30 day period.
- 4.6 Return of Funds. Contractor must return any of the following to the City within 10 business days of either City's written notification, or the Contractor becoming aware, the existence of funds, credits on-hand or collected, advance payments that:
- a. exceed allowable costs incurred during the Contract term; or
 - b. for which Contractor fails to deliver services as specified under the Contract.

Any amounts not returned within 10 business days may, at City's option, be subject to offset against future funding obligations by City. *"Business day" means 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.*

- 4.7 Cost Rules.
- (A) Administrative Overhead. Administrative overhead costs may not exceed twenty percent (20%) of the funding provided under this Contract. More stringent administrative overhead costs limitations may be applicable due to grant regulations associated with Contract funding. Contractor shall provide City detailed administrative costs by line item with its annual program budget.
 - (B) Contractor shall establish, submit with supporting documentation and use a Cost Allocation Plan with Contractor's annual program budget 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 and overhead not solely devoted to the Project funded by this Contract. The ***Cost Allocation Plan*** substantiates how the costs of a program are charged to a particular cost category or to the program and ensures that the City is paying only its share of the costs for services, overhead, and staffing.
 - (C) 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.

- (D) 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.
- (E) The use or purchase of gift cards is not allowed and not reimbursable under this Contract.
- 4.8 Each year Contractor shall submit to the Managing City Department a form 990 or 990T no later than 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 Contractor files under the extension.
- 4.9 The Contractor warrants 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 and throughout the term of the Contract.
- 4.10 Contractor shall comply with the following check writing and handling procedures:
- (A) No signing of blank checks.
- (B) No checks made payable to cash or bearer with the exception of those for petty cash reimbursement. Petty cash checks must not exceed 1) \$100.00 maximum per check and 2) \$200.00 in aggregate 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 the limit. 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 immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 4.11 Contractor shall comply with the following:
- (A) *"Program Income" means Contractor earnings from activities under this Contract or from Contractor's management of funding provided or received under this Contract. Program Income includes, but shall not be limited to,*
1. *interest income;*
 2. *usage or rental/lease fees;*
 3. *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*
 4. *payments from clients or third parties for services rendered by Contractor pursuant to this Contract.*
- Contractor must not charge fees or solicit donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
- (B) The Contractor must fully disclose and be accountable to the City for all **Program Income**. Contractor shall provide 30 days' written notice detailing the type, time, and place of all activities, anticipated to generate program income. Within 30 days after activity that generates program income, Contractor must submit a statement of expenditures and revenues to the Managing City Department. 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.
- (C) At the sole option and upon prior written direction from the Director of the Managing City Department, Contractor will either:
1. return **Program Income** funds to City within the timeframe that may be specified by the Director of the Managing City Department; or

2. retain **Program Income** funds to be added to the Project and used to further eligible Project objectives but only if the proposed expenditures are approved by the City; or
3. deduct **Program Income** funds from the total Project cost for the purpose of determining the net cost reimbursed by the City. In this case, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.

(D) Contractor must include this Section 4.11, in its entirety, in all of its subcontracts involving income-producing services or activities.

- 4.12 The City shall not be obligated to any third parties of Contractor (including any subcontractors or third party beneficiaries of Contractor) under this Contract.
- 4.13 Contractor shall maintain a financial management and accounting records system that provides the following:
 - 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 VII 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. The 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;
 - d. identification of separate funds by funding source and project;
 - e. 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;
 - f. procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
 - g. 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 the City;
 - h. supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
 - i. 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.
- 4.14 The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The City may, in its sole discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract.
- 4.15 Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. City may immediately terminate this Contract if the City finds, in its sole discretion, that Contractor's financial condition may impact performance under this Contract. The City may consider:
 - a. evidence such as the apparent inability of Contractor to meet its financial obligations;
 - b. items that reflect detrimentally on the credit worthiness of Contractor;
 - c. pending litigation, liens and encumbrances on the assets of Contractor;
 - d. the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property;

or

- e. 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. CONTRACT ADMINISTRATION

- 5.1 City-Supported Project. Contractor shall publicly acknowledge that this Project is supported by the City of San Antonio, Department of Human Services. Contractor must 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 City marks or logos, as applicable, to be used.
- 5.2 Contractor shall use the online Contract Management System provided by the City for the purpose of submitting all Contract related documents, including, but not limited to, monthly reports, budgets, budget revisions and requests for payment.
- 5.3 The Contractor shall comply with all **Grant Contract** (attached as **Attachment VII**, if applicable) terms and conditions and applicable grant program policies and procedures the City must comply with if this project is Grant funded.
- 5.4 If any disagreement or dispute arises between the Parties that pertains to this Contract or any applicable governing rules, regulations, laws, codes or ordinances, then the City Manager, as the City representative ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the Grantor's rules or regulations, if Grant funded, shall have the final authority to render or secure an interpretation.
- 5.5 The City may, during normal business hours, inspect the operating facility used by the Contractor for the administration of this Contract and may require safety or security measures such as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment funded by this Contract.
- 5.6 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions, including, but not limited to:
 - a. Roster of current Board Members (name, title, address, telephone number and e-mail address);
 - b. Current and any amendments to Bylaws and Charter;
 - c. Terms of Officers;
 - d. Schedule of anticipated board meetings for current Fiscal Year;
 - e. Board Agenda, to be submitted at least three (3) business days prior to each Board meeting; and
 - f. Minutes of board meetings that are approved by the Contractor's board
- 5.7 Contractor must have or shall comply with the following regarding personnel management:
 - (A) An employee ethics or integrity policy that outlines a) the requirements for employees to conduct themselves in an ethical manner consistent with the values of the Contractor; and b) the process for identifying, investigating, and enforcing potential breaches of the policy.
 - (B) Internal project management procedures to mitigate the risk of theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to reasonably 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.
 - (C) The employee ethics policy and the project management procedures will be provided to the Managing City Department upon request by the Managing City Department.
 - (D) Contractor shall immediately notify the City if any unethical, illegal, or potentially fraudulent activity involves or is related to funds provided by the City and shall provide the City with timely updates on any investigation or inquiry into the activity.

- (E) Contractor represents and warrants that it has conducted a criminal background check, at its own expense, for employees providing services related to this Contract. No employee of Contractor shall be eligible to perform services related to this Contract if he or she, (1) has been convicted of, or was placed in a pre-trial diversion program for, any crime involving dishonesty or breach of trust including, but not limited to, check kiting or passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (2) has been convicted of any weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation, extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use; or 3) is listed on the national register of sex offenders.
- (F) The 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.
- (G) Chief Executive Officers (CEOs), directors and other management positions may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, ("Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives may be co-workers in the same Project but only in non-supervisory roles.
- (H) Contractor represents and warrants that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all licensing, training, and competency standards promulgated by relevant authoritative or professional bodies. The Contractor will 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.
- (I) Contractor must include written job descriptions in personnel folders for each position in the organization funded through this Contract. Job titles and descriptions in the budget (**Attachment II**) that affect a salary or range increase may not be changed without the prior written approval of the Director of the Managing City Department.
- (J) The Director of the Managing City Department may, in his or her sole discretion, approve reimbursement of pay to full time, permanent employees for other than annual or personal leave for the following:
 1. To attend Armed Services training, up to 15 business days;
 2. To serve as a juror;
 3. To attend the funeral of someone in the immediate family, up to 3 days as long as not charged to annual or personal leave. 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 the relative.
 4. To attend seminars or workshops.

5.8 The following applies to equipment or intellectual property that was purchased or created with City funds:

- (A) Ownership. The City shall own all tangible property, including but not limited to, vehicles, equipment and furniture, purchased with funds received through the City. The tangible property shall, at the City's sole option, be delivered to the City upon the expiration or termination of this Contract. The Contractor must relinquish and transfer possession of and, if applicable, title to tangible property without the requirement of a court order. Tangible property that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. No tangible property purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department.
- (B) Contractor shall maintain records for and provide an annual inventory of tangible property purchased with City funds, to include:
 1. A description of the item, including the model and serial number, if applicable;
 2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;

3. An indication of whether the item is new or used;
 4. The vendor's name (or transferred from);
 5. The location of the property;
 6. The property number shown on the property tag; and
 7. A list of disposed items and disposition.
- (C) Contractor shall safeguard, maintain and fully insure all City-funded property against fire, loss and theft. The Contractor is also solely responsible for reporting and replacing with like property all lost, stolen, missing, damaged, or destroyed property purchased or leased with City funds. All replacement property will be treated in the same manner as property purchased with City funds. All lost, stolen, missing, damaged and/or destroyed property shall be reported to law enforcement agencies as appropriate. The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the property having been lost, stolen, missing, damaged and/or destroyed.

The report submitted by the Contractor to the Managing City Department must include:

1. A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
 2. A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
 3. A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.
- (D) Ownership of Intellectual Property. The Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. If the City is unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing contained in this Contract 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.

5.9 Contractor shall comply with the following regarding City-funded travel:

- (A) Travel costs are allowable if:
1. they are approved in the budget;
 2. supported by detailed documentation, for example, conference costs to include itineraries and documentation certifying conference attendance;
 3. travel costs (including per diem rates) are do not exceed those allowed under the City's travel policies and conform to the reimbursement rates under the United States General Services Administration; and

4. transportation fares are at economy class rates.

- (B) Mileage reimbursement rates must not exceed the City's policy for mileage reimbursement and must comply with IRS rules. To be eligible for mileage reimbursement, the employees must
1. possess a valid Texas Driver's License and liability insurance as required by law; and
 2. record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep the record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City.

Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

- 5.10 The Department of Human Services participates in a Dual Generation initiative with the United Way of Bexar County and San Antonio. To continue to promote best practices, Contractor is encouraged to adhere to the following principles while performing the scope of work:
- a. A multi-generational approach – Partners/contractors understand that they can more effectively address a child's needs within the context of the capacity and needs of the entire family and vice versa.
 - b. Families are partners - A coaching approach, instead of a traditional case management model, supports family-centered actions to work with the family toward their goals. Families inform the work of the partnership and participate in collective decision-making.
 - c. Mutual accountability and shared outcomes – As no single partner/contractor alone can guarantee positive outcomes for families all partners have a vested interest in collectively supporting families and each other. Partners/Contractors remain accountable for their contribution to family wellbeing but understand the limits of their contribution and their need to rely on other partners/contractors.
 - d. Collaboration and coordination – Partners/contractors participate in regular forums with other providers serving the same families and coordinate their work both at the family and partnership level.
 - e. Data sharing and continuous learning – Partners/contractors routinely share and review individual and aggregate level performance data to inform and improve their work with families and as a partnership. Partners/contractors commit to using a client level shared data platform as source for this learning.

VI. AUDIT

- 6.1 If Contractor expends \$750,000 or more of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete an independent audit and submit the audit report within the earlier of:
- a. 30 calendar days after receipt of the auditor's report(s); or
 - b. 9 months after the end of Contractor's fiscal year; or
 - c. 9 months after the expiration or early termination of this Contract.

Contractor must furnish the Managing City Department a copy of the corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within 30 calendar days of receipt of the audit report or upon submission of the corrective action plan to the auditor.

If Contractor is notified of federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within 10 calendar days of receipt of the report.

- 6.2 If Contractor expends less than \$750,000 of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete and submit an unaudited financial statement(s) within the earlier of:

- a. 9 months following the end of Contractor's fiscal year; or
- b. 9 months following expiration or early termination of this Contract.

The financial statement must include the following 1) a balance sheet and income statement prepared by a bookkeeper, 2) a cover letter signed by Contractor attesting to the correctness of the financial statement, and 3) a schedule of receipts and disbursements by budgeted cost category for each project funded by the City.

- 6.3 If Contractor receives or expends more than \$750,000 in federal funds from the City, then an audit must be conducted 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 (Uniform Guidance). Contractor shall submit copies of its annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or 9 months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana.

Contractor may submit reports through the following website:

<https://harvester.census.gov/facides/Account/Login.aspx> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

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

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

Contractor agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.

- 6.4 The City may conduct or have an audit conducted or conduct a review of the use of funds and documentation associated with this Contract. City is entitled to determine the scope of any audit. 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. Contractor must make available to City all accounting and Project records.
- 6.5 Contractor, 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, must make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract 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. The records shall be maintained for the required retention period, except if there is pending litigation or if the audit report has not been accepted, then the Contractor shall retain the records for as long the City requires retention. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.
- 6.6 If an audit or examination determines that the Contractor has expended funds or incurred costs which may be inconsistent with this Contract or if the applicable state or federal governing agency raises compliance issues, then Contractor shall be notified and provided an opportunity to address the issues.
- 6.7 City shall provide Contractor written notification if reimbursed expenses or charges are disallowed by the City because of review or audit findings. The Managing City Department may, in its sole discretion, elect

to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Contractor to fully refund the disallowed amounts by cashier's check or money order within ten days after receipt of written notification. Contractor may not reduce Project expenditures if the City opts to deduct disallowed expenses or charges from future reimbursements.

- 6.8 Any expenses for the collection of delinquent debts owed by Contractor are the sole responsibility of the Contractor and shall not be paid from any Project funds.
- 6.9 If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit from non-City resources.

VII. RECORDS AND REPORTING

- 7.1 The Managing City Department is responsible for monitoring, fiscal control, and evaluation of this Project.
 - (A) Contractor shall submit to the Managing City Department a **Contract Monitoring Report** no later than the 15th day of every month detailing the actual services delivered and outcomes achieved against the projected performance measures, and shall attach documentation supporting the same, for the month preceding the submission. A Contract Monitoring Report containing projected monthly performance measures for the entire Contract term is attached. (**Attachment IV**).
 - (B) At such times and in such form as may be required by the Managing City Department, Contractor shall prepare and submit to the Managing City Department or the Grantor of applicable grant funds any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Contract.
 - (C) Within 30 days from the expiration or termination of this Contract, Contractor shall submit all final reports and deliverables to City along with a receipt for all sums and a release of all claims against the Project.

The Contractor represents that all information in reports submitted to City is accurate and that supporting documentation shall be maintained. The Contractor shall, upon reasonable request, allow and facilitate interviews or discussions with its personnel, board members and Project participants.

- 7.2 Contractor shall not disclose information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City, which is marked "confidential" or for which City informs Contractor is "confidential," including, without limitation, reports, records, 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 under this Contract. Contractor shall protect the Confidential Information and shall take the necessary steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VII, Section 7.2, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VII, Section 7.2 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 request at the expiration or termination of this Contract, Contractor shall deliver to City all copies of materials related to the Project, including the Confidential Information.
- 7.3 If applicable, Contractor shall execute a **HIPAA Business Associate Agreement** in substantially the same form as shown in **Attachment VI**, which is intended to protect the privacy and provide for the security of

Protected Health Information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

- 7.4 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Contractor represents that no 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.
- 7.5 Contractor shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.2(C) of this Contract

VIII. INSURANCE

- 8.1 Contractor will comply with the **Insurance Requirements** attached and incorporated into this Contract for all purposes as **Attachment V**.

IX. INDEMNITY

- 9.1 **CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

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 CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IF CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

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

X. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

THIS SECTION INTENTIONALLY LEFT BLANK

XI. COMPLIANCE WITH LAWS

- 11.1 Contractor shall comply with all applicable federal, state and local laws, rules and regulations, codes, charters, ordinances, rules, regulations, policies, and procedures, and any and all amendments or additions to these as they may be promulgated, applicable to the services provided by, or funds received by Contractor hereunder, as directed by the City or as required in this Contract. Failure to comply with applicable laws may subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.2 Additionally, Contractor shall comply with the following:
- (A) If using City of San Antonio General Funds, expenditures shall be made in accordance with:
 - 1. Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
 - 2. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
 - (B) The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988.
 - (C) Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - (D) 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>. 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 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 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.
 - (E) 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 in this Contract.
 - (F) Additionally, Contractor shall comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
 - 1. Title VII of the Civil Rights Act of 1964, as amended;
 - 2. Section 504 of the Rehabilitation Act of 1973, as amended;
 - 3. The Age Discrimination Act of 1975, as amended;
 - 4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 - 5. Fair Labor Standards Act of 1938, as amended;
 - 6. Equal Pay Act of 1963, P.L. 88-38;
 - 7. Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and
 - 8. All applicable regulations implementing the above laws.

- (G) The Contractor shall comply with all applicable local, state, and federal employment laws including, but not limited to:
1. worker's compensation;
 2. unemployment insurance;
 3. timely deposits of payroll deductions;
 4. 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;
 5. Occupational Safety and Health Act regulations; and
 6. Employee Retirement Income Security Act of 1974, P.L. 93-406.
- (H) 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.
- (I) Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
1. does not boycott Israel; and
 2. will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, Contractor, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Contract. City hereby relies on Contractor's verification. If found to be false, City may terminate this Contract for material breach.

11.3 In addition, if Contractor received federal grant funds through this Contract, Contractor agrees that:

- (A) Contractor shall comply with the 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.
- (B) If federal funds are in excess of \$150,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the

federal agency providing funds for this Contract and the appropriate EPA Regional Office. Additionally, Contractor agrees to include these requirements in each subcontract to this Contract exceeding \$150,000 financed in whole or in part with federal funds.

- (C) Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Contractor agrees to include within its subcontracts a requirement that its subcontractors comply with this provision.
- (D) Contractor has tendered to the City a Certification of Restrictions on Lobbying in compliance with the Byrd Anti-lobbying Amendment (31 U.S.C. §1352), and any applicable implementing regulations, if Contractor applied for or bid for an award exceeding \$100,000.00 from the City.
- (E) In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 12.4 No member of 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 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;

- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

12.6 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. TERMINATION

13.1 Termination for Cause. Should the Contractor fail to fulfill in a timely and proper manner, or violate, obligations, covenants, conditions, or stipulations of this Contract, the City shall 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 10th day following the day on which such notice is sent).

13.2 Termination for Convenience. This Contract may be terminated in whole or in part by either Party for any reason. Such termination shall specify the effective date thereof, which date shall not be sooner than the 30th day following the day on which notice is sent.

13.3 The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.

13.4 Notwithstanding any other remedy contained in this Contract or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges 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 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.

XIV. DEBARMENT

14.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program. Contractor shall provide immediate written notice to City, in accordance with the notice requirements of **Article XVII**, 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.

14.2 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. AMENDMENT

15.1 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** 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 in **Attachment V** 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 3.4, and to amend the budget accordingly which is set forth in **Attachment II**. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 15.1(E); or
- (F) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

XVI. ASSIGNMENT AND SUBCONTRACTING

- 16.1 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.
- 16.2 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. 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.
- 16.3 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 under this Contract, including those referenced in Section 11.2(A). It is further agreed by the Parties 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 Contractor failed to comply with this Section, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination.
- 16.4 Licenses And Training for Subcontractors. Contractor warrants and certifies that Contractor's subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all competency standards promulgated by relevant authoritative bodies, as applicable to the services provided hereunder.

- 16.5 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.

XVII. OFFICIAL COMMUNICATIONS

- 17.1 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:

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

Contractor:
President/CEO
Family Service Association of San Antonio, Inc.
702 San Pedro
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.

XVIII. PROHIBITED ACTIONS

- 18.1 Political Activity.

- (A) 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.
- (B) 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.
- (C) The prohibitions set forth in Sections 18.1(A) and 18.1(B) of this Contract include, but are not limited to, the following:
1. 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;
 2. 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;
 3. 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

4. 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.
- (D) 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, which shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the contact person listed on the statement within the Managing City Department. Contractor shall have each said individual sign a statement acknowledging receipt of the policy.
 - (E) 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.
 - (F) This Section 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.
- 18.2 Adversarial Proceedings. Contractor agrees that 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. Contractor understands that the City may deem Contractor ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.
 - 18.3 No Use of Funds for Religious Activities. 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 benefit, directly or indirectly, any such sectarian or religious facility or activity, or for the construction, operations, maintenance or administration of any sectarian or religious facility or activity.
 - 18.4 Contribution Prohibitions. Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for an entity 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 Consolidated Human Development Funding Services Pool Request for Proposal (RFP) is released, and ending on the 30th calendar day following the contract award. 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. Contractor acknowledges that the City has identified this Contract as high profile. Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 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.

XIX. MISCELLANEOUS

- 19.1 Independent Contractor. 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 has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 19.2 Nothing contained in this Contract shall be deemed or construed by the Parties 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.

- 19.3 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.
- 19.4 Non-Waiver. No waiver, change, modification or discharge by either Party 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. 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. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Contract or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.
- 19.5 Venue. 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 under this Contract are performable in Bexar County, Texas. Any action or proceeding to 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.
- 19.6 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.
- 19.7 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 City, it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained. It is also the intention of the Parties 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.
- 19.8 Authority. 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 its terms, conditions, provisions and obligations. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in its application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.
- 19.9 Entire Contract. This Contract and its attachments, if any, contain all of the terms and conditions agreed upon, constitute the entire and integrated Contract between the Parties, 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:

**FAMILY SERVICE ASSOCIATION OF
SAN ANTONIO, INC.**

Melody Woosley, Director
Department of Human Services

Mary E. Garr, President/CEO

Date

Date

APPROVED AS TO FORM:

Assistant City Attorney

Board President (if required by Agency)

ATTACHMENTS

Attachment I – Scope of Work and Scorecard
Attachment II – Budget
Attachment III – Funding Guide
Attachment IV – Contract Monitoring Report
Attachment V – Insurance Requirements
Attachment VI – HIPAA Business Associate Agreement
Attachment VII – N/A

Contract # _____

**PROFESSIONAL SERVICES CONTRACT
WITH
SOUTH ALAMO REGIONAL ALLIANCE FOR THE HOMELESS (SARAH)**

This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO, a Texas municipal corporation ("CITY"), acting by and through its Director of the Department of Human Services pursuant to Ordinance No. 2018-09-13-____, dated September 13, 2018, and CONSULTANT"), both of which may be collectively referred to 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. TERM

- 1.1 This CONTRACT shall commence on October 1, 2018 and shall terminate on September 30, 2019 unless earlier termination shall occur pursuant to any provision hereof.

II. SCOPE OF SERVICES

- 2.1 The CONSULTANT will provide all services in compliance with the Statement of Work and Budget (Attachment "A") in a manner satisfactory to the Director of the Department of Human Services ("Director"). CITY shall have the right to terminate this CONTRACT, in whole or in part, in accordance with Article XIV, Termination, should CONSULTANT's work not be satisfactory to Director, as solely determined by 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.
- 2.2 CONSULTANT shall submit to the Human Services Department a **Contract Monitoring Report** no later than the 15th day of every month detailing the actual services delivered and outcomes achieved against the projected performance measures, and shall attach documentation supporting the same, for the month preceding the submission. A Contract Monitoring Report containing projected monthly performance measures for the entire CONTRACT term is attached. (Attachment "C").
- 2.3 CONSULTANT shall use the online Contract Management System provided by the CITY for the purpose of submitting all CONTRACT related documents, including, but not limited to, monthly reports, budgets, budget revisions and requests for payment.

III. COMPENSATION TO CONSULTANT

- 3.1 CITY agrees to pay CONSULTANT an amount not to exceed \$125,000.00 as total compensation, in accordance with the Budget details set forth in the Statement of Work and Budget after determination by the Director of the Department of Human Services that the CONSULTANT has satisfactorily performed the services set forth in the attached Statement of Work.
- 3.2 Advance payment. In case of unforeseen or special circumstances, CONSULTANT may submit to the Director of the Managing City Department, in the form prescribed by the CITY, a written request for advance payments, including the specific reason for such request no less than ten (10) business days before the requested date of payment. Each request will be considered by the Director of the Managing City Department on a case-by-case basis. The Director of the Managing City Department's shall have sole discretion to approve or disapprove a request. If advance payments are approved then:
- a. CONSULTANT's payments to its vendors using funds advanced by the CITY shall be paid in a prompt and timely manner but no later than 10 calendar days after the CONSULTANT is notified that an advance payment has been made available so long as services have been performed by the vendor.

- b. CONSULTANT must deposit advanced CITY funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If CONSULTANT's total deposits in the bank, including all CITY funds deposited with the bank, exceed the FDIC insurance limit, then the CONSULTANT must arrange to automatically have the excess collaterally secured. CONSULTANT must provide CITY a copy of the collateral agreement with the CONSULTANT's banking institution. Advanced funds that cause the CONSULTANT's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). CONSULTANT 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, in detail, expenditures made pursuant to this and all other CITY contracts.
 - c. The CITY may, in its sole discretion, either 1) deduct pro rata from the remaining monthly reimbursements amounts necessary to offset the amount advanced, or 2) deduct from a single subsequent monthly reimbursement the full amount advanced to CONSULTANT. The CITY will consider factors such as projected allowable costs and other pertinent indicators such as CONSULTANT's financial stability. CONSULTANT shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.
- 3.3 CONSULTANT shall submit to CITY no later than the 15th of every month a monthly Request for Payment in the form prescribed by City, which details (a) the specific costs (by category and by program account number) CONSULTANT expensed in the previous month for the services delivered; and (b) supporting documentation of costs as may be required by the Director of the Human Services Department (e.g., original or certified copies of invoices, cancelled checks, CONSULTANT's general ledger and/or receipts to verify invoiced expenses). CITY shall pay CONSULTANT within thirty (30) days of receipt and approval by Director. Requests for Payment shall be submitted to: City of San Antonio, Department of Human Services, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.
- 3.4 The Parties hereby agree that all compensable expenses of CONSULTANT have been provided for in the total payment to CONSULTANT as specified in section 3.1 above. No additional fees or expenses of CONSULTANT shall be charged by CONSULTANT nor be payable by CITY, without prior approval and written agreement of the Parties.
- 3.5 Final payment due under the CONTRACT will not be paid until all the 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. 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.
- 3.6 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.
- 3.7 If this CONTRACT is partially or wholly grant funded, and reduced funds are awarded to the CITY, the budget for this CONTRACT may be adjusted to correspond to the actual award received by the CITY.

IV. INDEPENDENT CONTRACTOR

- 4.1 CONSULTANT is and shall be deemed to be an independent contractor, and not an officer, agent, servant or employee of CITY, and CONSULTANT is responsible for the acts or omissions of its officers, agents, employees, contractors, subcontractors and consultants, and the CITY shall in no way be responsible therefor. Nothing contained in this CONTRACT shall be deemed or construed by the Parties 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 or. 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 CONSULTANT under this CONTRACT and the CONSULTANT has no authority to bind the CITY.

V. CONFIDENTIALITY

- 5.1 No reports, information, designs, data nor 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 a request to disclose or produce documents, CONSULTANT shall inform the CITY immediately for the purpose of receiving direction regarding the manner of processing.
- 5.2 CONSULTANT shall comply with laws, regulations and rules pertaining to confidentiality and shall establish a method to secure the confidentiality of documents 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.

VI. OWNERSHIP OF DOCUMENTS

- 6.1 Any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, CONSULTANT, and any related responses, inquiries, correspondence and materials which has come into CONSULTANT's custody, ("documents") pursuant to the provisions of this CONTRACT are the exclusive property of CITY; and no such documents shall be the subject of any copyright or proprietary claim by CONSULTANT.
- 6.2 CONSULTANT agrees that as the exclusive owner of any and all such documents, CITY has the right to use all such documents as CITY desires, without restriction or further compensation to CONSULTANT. CONSULTANT shall deliver, at CONSULTANT's sole cost and expense, all CONTRACT related documents and reports to the CITY in accordance with the dates established under this CONTRACT, and in a timely and expeditious manner, and if a delivery date is not specified, then upon termination of the CONTRACT if requested by the CITY.
- 6.3 CONSULTANT shall notify CITY immediately of any requests for information from a third party which pertain to documents obtained and/or generated pursuant to this CONTRACT. CITY reserves the right to process and handle all such requests.

VII. RIGHT OF REVIEW AND RECORDS RETENTION

- 7.1 CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all 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 CONTRACT period, including any extension or renewal hereof, and the record retention period established in this CONTRACT, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 7.2 CONSULTANT shall retain any and all documents produced as a result of services provided under this CONTRACT for a period of four (4) years ("retention period") from the date of termination of the CONTRACT. 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 under this CONTRACT, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CITY shall have access to all such documents at all times, as deemed necessary by CITY, during the retention period. CITY may, at its election, require CONSULTANT to return the documents to CITY at CONSULTANT's expense prior to or at the conclusion of the retention period. In such event, CONSULTANT may retain a copy of the documents.

VIII. LICENSES AND CERTIFICATIONS

- 8.1 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 that

CONSULTANT meets all competency standards promulgated by all other authoritative bodies, as applicable to the services provided under this CONTRACT.

IX. COMPLIANCE

- 9.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations. Failure to comply with applicable laws and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions. If a disagreement or dispute arises between the Parties pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio and applicable grant rules and regulations, shall have the final authority to render or secure an interpretation.
- 9.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988.
- 9.3 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. Also, 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 the foregoing laws.
- 9.4 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
 - (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, CONSULTANT, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the CONTRACT. City hereby relies on CONSULTANT'S verification. If found to be false, City may terminate this CONTRACT for material breach.

X. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

10.2 Pursuant to the subsection above, CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that by contracting with the CITY, CONSULTANT does not cause a City employee or officer to have a prohibited financial interest in the CONTRACT. CONSULTANT further warrants and certifies that it has tendered to the CITY a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XI. INSURANCE

11.1 Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CITY’s Department of Human Services, which shall be clearly labeled “Consulting Services- U.S. Housing and Urban Development TX-500 San Antonio/Bexar County Homeless Continuum of Care FY 2018-2019 Notice of Funding Availability (NOFA) Application Administration and Coordination” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the CITY. The CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the CITY’s Human Services Department. No officer or employee, other than the CITY’s Risk Manager, shall have authority to waive this requirement.

11.2 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 whereby CITY may incur increased risk.

11.3 A CONSULTANT’s financial integrity is of interest to the CITY; therefore, subject to CONSULTANT’s right to maintain reasonable deductibles in such amounts as are approved by the 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, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Products/completed operations c. Personal / Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

4. Professional Liability (Claims Made Basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$100,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
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- 11.4 CONSULTANT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of CONSULTANT herein, and provide a certificate of insurance and endorsement that names the CONSULTANT and CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CONSULTANT. CONSULTANT 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 CONTRACT. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the CONTRACT for all purposes.
- 11.5 As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all required endorsements. CONSULTANT shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. CONSULTANT shall pay any costs incurred resulting from provision of said documents.
- City of San Antonio
Attn: Human Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966
- 11.6 CONSULTANT 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, or non-renewal in coverage, and not less than ten (10) days advance notice for nonpayment of premium.
- 11.7 Within five (5) days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'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.
- 11.8 In addition to any other remedies the 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, the CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

- 11.9 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.
- 11.10 It is agreed that CONSULTANT'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.
- 11.11 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.
- 11.12 CONSULTANT and any subcontractors are responsible for all damage to their own equipment and/or property.

XII. INDEMNITY

- 12.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT's activities under this CONTRACT including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 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.
- 12.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT 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.
- 12.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, 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 CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XIII. NON-DISCRIMINATION

- 13.1 As a condition of entering into this CONTRACT, CONSULTANT represents and warrants that it will 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 treatment of subcontractors, vendors, suppliers, or customers, nor shall CONSULTANT retaliate against any person for reporting instances of such discrimination. CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities.

XIV. TERMINATION

- 14.1 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 in this CONTRACT.
- 14.2 **TERMINATION BY NOTICE:** The CONTRACT may be terminated by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) days from the date such notice is sent. If the notice does not specify a date of termination, the effective date of termination shall be thirty-five (35) days after the date the notice is sent. 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.
- 14.3 **TERMINATION FOR CAUSE:** If either party defaults in the performance of any of the terms or conditions of this CONTRACT, the non-defaulting party shall deliver to the defaulting party written notice specifying the matters of default. The defaulting party shall have ten (10) 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, the non-defaulting party may terminate this CONTRACT, in whole or in part, upon written notice, as of the date provided in the notice.
- 14.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties specified in this CONTRACT or if any law is interpreted to prohibit such performance, and the CONTRACT may not be continued by severance of the prohibited duties, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 14.5 **NON-APPROPRIATION:** If, 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 this CONTRACT and has no funds to do so from other sources, this CONTRACT may be terminated. To effect this termination, the CITY shall, thirty (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.
- 14.6 **EFFECT OF TERMINATION:** Upon the effective date of expiration or termination of this CONTRACT CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its approved subcontractors pursuant to this CONTRACT. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and documents and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate, if so requested by CITY; otherwise, the documents shall be retained by CONSULTANT in accordance with Article VII, Right of Review and Records Retention. Any records or documents transfer shall be completed within fifteen (15) days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT's sole cost and expense.

- 14.7 Within thirty (30) 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. Failure by CONSULTANT to submit its claims within said thirty (30) days shall negate any liability on the part of CITY and constitute a waiver by CONSULTANT of any and all right or claims to collect funds that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 14.8 Upon termination of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) 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.
- 14.9 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 under this CONTRACT or other action.

XV. AMENDMENT

- 15.1 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.
- 15.2 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 automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part of this CONTRACT as of the effective date of the rule, regulation or law.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient, if in writing, and to have been duly given if and when delivered personally, with receipt acknowledged, or upon receipt if 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
Department of Human Services
106 St. Mary's Street, 7th Floor
San Antonio, Texas 78205

CONSULTANT

Executive Director
South Alamo Regional Alliance for the Homeless
(SARAH)
1 Haven for Hope Way
San Antonio, Texas 78207

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he or she 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 in this CONTRACT.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 CONSULTANT shall perform all necessary work or shall supply qualified personnel as may be necessary to complete the work to be performed under this CONTRACT. CONSULTANT shall obtain prior written approval from CITY before assigning or subcontracting any responsibilities under this CONTRACT. The

violation of this provision by CONSULTANT shall not 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 Any services approved for subcontracting under this CONTRACT 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 CONTRACT. Compliance by subcontractors with this CONTRACT shall be the responsibility of CONSULTANT. CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance of services or payment of fees.

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. NON-WAIVER

- 20.1 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 contained in this CONTRACT. In fact, no waiver, change, modification or discharge by either party 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. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party under this CONTRACT or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.

XXI. VENUE AND GOVERNING LAW

- 21.1 ALL OBLIGATIONS OF THE PARTIES CREATED UNDER THIS CONTRACT ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. 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.**

XXII. SEVERABILITY

- 22.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension, it is the intention of the Parties that the remainder of the CONTRACT shall not be affected by it, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

XXIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

- 23.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. CONSULTANT hereby certifies that it is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on

CONSULTANT's certification. If found to be false, or if CONSULTANT is identified on such list during the course of its contract with City, City may terminate this CONTRACT for material breach.

XXIV.ENTIRE AGREEMENT

24.1 Each of the Attachments listed below is an essential part of the CONTRACT, which governs the rights and duties of the Parties. This CONTRACT, together with its authorizing ordinance, exhibits and attachments, if any, embodies the final and entire agreement of the Parties, 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.

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

CITY

City of San Antonio, Texas

CONSULTANT

South Alamo Regional Alliance for the Homeless (SARAH)

Melody Woosley, Director
Department of Human Services

Brenda Mascorro, Executive Director

Date

Date

APPROVED AS TO FORM:

Assistant City Attorney

Attachment A – Statement of Work and Budget

Attachment B – General Information Form

Attachment C - Contract Monitoring Report

		<u>Contract #</u>
STATE OF TEXAS	*	
COUNTY OF BEXAR	*	DELEGATE AGENCY CONTRACT
		WITH
CITY OF SAN ANTONIO	*	Project QUEST, Inc.

This Contract is between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its Director of the Department of _Economic Development ("Managing City Department") pursuant to Ordinance No. _____, dated _____, and the ___Project QUEST, Inc._____, ("Contractor") (together, the "Parties").

Background

- A. The City adopted a budget for the expenditure of City of San Antonio General or Grant Fund Operating funds ("General Fund" or "Grant Fund," as applicable), which included an allocation of funds for a project entitled "Project QUEST" ("Project"); and
- B. The Project shall cover the Workforce Development activities set forth in **Attachment I (a)** and the Open Cloud Academy activities set forth in **Attachment I (b)**.
- C. The City wishes to engage the Contractor to carry out the Project.

Contract

The Parties agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide, oversee and administer all activities and services in a manner satisfactory to the City and in compliance with the attached **Scopes of Work** and **Scorecards ("Attachments I (a) and I (b)")**.

II. TERM

- 2.1 This Contract shall begin on October 1, 2018 and shall terminate on September 30, 2019.

III. CONSIDERATION

- 3.1 The City will reimburse Contractor in an amount not to exceed \$2,200,000 for costs incurred in accordance with the attached **Budget ("Attachment II")**, and all subsequently authorized Budget Revisions or Budget Amendments to that Budget. The Budget will clearly delineate costs associated with the services in **Attachments I (a) and I (b)**.
- 3.2 Funding through this Contract is based on an allocation from the following sources:

General Fund: \$2,000,000 for Workforce Development activities (funds under **Attachment I (a)**)
\$200,000 as a separate general Fund allocation (funds under **Attachment II (b)**)

Contractor shall comply with the attached **Funding Guide ("Attachment III")**.
- 3.3 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 under this Contract. If the City does not receive sufficient funds to make payments pursuant to this Contract or if the award of Grant Funds is

reduced, then City, at its sole discretion, may elect to terminate this Contract or reduce the Scope of Work and Compensation. City shall notify Contractor in writing of its determination within a reasonable time.

- 3.4 Contractor's total agency revenues and expenses derived from both non-City sources and from the City is deemed Contractor's Total Budget:

$$\text{Total Budget} = \text{non-City revenue/expenses} + \text{City Revenue/expenses}$$

The percentage of Total Budget derived from non-City sources must meet the following "match" requirements:

- (A) If Contractor receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then Contractor must obtain at least 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).
- (B) 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).

In addition, 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. City shall require sufficient information that Contractor's match is in place before contract execution, and may request, at the end of each quarter, information and documentation confirming that Contractor has expended or is on course to expend its "match" requirement before the end of the Contract term. City has no obligation to provide any funds until Contractor demonstrates having secured or expended the required percentage of matching funds. Pell grants and other awards received by individuals, and in-kind contributions shall not count toward its matching fund requirements. If Contractor does not provide City with acceptable information and documentation that the required amount of non-City funds have been expended then City may reduce or recapture funds pursuant to Section 4.6 to comply with the match requirement. Contractor acknowledges that reduction or recapture of funds pursuant to Section 4.6 does not require the approval of City Council.

IV. COST REIMBURSEMENT; FISCAL RESPONSIBILITY

- 4.1 ***Allowable Costs*** means those costs which are necessary, reasonable and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XI for the proper administration and performance of the services to be provided under this Contract. The City's payment obligation under this cost reimbursement Contract is limited to making reimbursements for Allowable Costs incurred as a direct result of City-funded services provided by the Contractor in accordance with this Contract and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Contract Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Contract Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- 4.2 **Advance payment.** In case of unforeseen or special circumstances, Contractor may submit to the Director of the Managing City Department, in the form prescribed by the City, a written request for advance payments, including the specific reason for such request no less than ten (10) business days before the requested date of payment. Each request will be considered by the Director of the Managing City Department on a case-by-case basis. The Director of the Managing City Department's shall have sole discretion to approve or disapprove a request. If advance payments are approved then:
 - a. Contractor's payments to its vendors using funds advanced by the City shall be paid in a prompt and timely manner but no later than 10 calendar days after the Contractor is notified that an advance payment has made available so long as services have been performed by the vendor.
 - b. Contractor must deposit advanced City funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If Contractor's total deposits in the bank, including all City funds deposited

with the bank, exceed the FDIC insurance limit, then the Contractor must arrange to automatically have the excess collaterally secured. Contractor must provide City a copy of the collateral agreement with the Contractor's banking institution. Advanced funds that cause the Contractor's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). 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, in detail, expenditures made pursuant to this and all other City contracts.

- c. The City may, in its sole discretion, either 1) deduct pro rata from the remaining monthly reimbursements amounts necessary to offset the amount advanced, or 2) deduct from a single subsequent monthly reimbursement the full amount advanced to Contractor. The City will consider factors such as projected allowable costs and other pertinent 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's Request for Payment. Contractor shall submit to City no later than the 15th of every month a monthly Request for Payment in the form prescribed by City, which details:

- a. the specific costs (by category, program account number and whether it falls under **Attachment I (a) or (b)**) Contractor expensed in the previous month for the services delivered as described in Article I; and
- b. supporting documentation of costs as may be required by the Director of the Managing City Department (e.g., original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses); and
- c. the Program Income received or projected during the same time period.

City may require Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.

4.4 City Payment. City shall pay for eligible expenses and undisputed amounts in submitted Requests for Payments within 30 calendar days of receiving a properly completed, documented and approved Request for Payment.

4.5 Final Request for Payment. The Contractor shall submit to City all final requests for payment no later than 30 days from the expiration or early termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department allowing Contractor to submit a request for payment after the 30 day period.

4.6 Return of Funds. Contractor must return any of the following to the City within 10 business days of either City's written notification, or the Contractor becoming aware, the existence of funds, credits on-hand or collected, advance payments that:

- a. exceed allowable costs incurred during the Contract term; or
- b. for which Contractor fails to deliver services as specified under the Contract.

Any amounts not returned within 10 business days may, at City's option, be subject to offset against future funding obligations by City. *"Business day" means 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.*

4.7 Cost Rules.

- (A) Administrative Overhead. Administrative overhead costs may not exceed twenty percent (20%) of the funding provided under this Contract. More stringent administrative overhead costs limitations may be applicable due to grant regulations associated with Contract funding. Contractor shall provide City detailed administrative costs by line item with its annual program budget.

- (B) 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.
 - (C) 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.
- 4.8 Each year Contractor shall submit to the Managing City Department a form 990 or 990T no later than 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 Contractor files under the extension.
- 4.9 The Contractor warrants 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 and throughout the term of the Contract.
- 4.10 Contractor shall comply with the following check writing and handling procedures:
- (A) No signing of blank checks.
 - (B) No checks made payable to cash or bearer with the exception of those for petty cash reimbursement. Petty cash checks must not exceed 1) \$100.00 maximum per check and 2) \$200.00 in aggregate 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 the limit. 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 immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 4.11 Contractor shall comply with the following:
- (A) *"Program Income" means Contractor earnings from activities under this Contract or from Contractor's management of funding provided or received under this Contract. Program Income includes, but shall not be limited to,*
 - 1. *interest income;*
 - 2. *usage or rental/lease fees;*
 - 3. *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*
 - 4. *payments from clients or third parties for services rendered by Contractor pursuant to this Contract.*

Contractor must not charge fees or solicit donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
 - (B) The Contractor must fully disclose and be accountable to the City for all **Program Income**. Contractor shall provide 30 days' written notice detailing the type, time, and place of all activities anticipated to generate program income and whether such activity falls under **Attachment I (a) or (b)**. Within 30 days after activity that generates program income, Contractor must submit a statement of expenditures and revenues to the Managing City Department. 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.
 - (C) At the sole option and upon prior written direction from the Director of the Managing City Department, Contractor will either:

1. return **Program Income** funds to City within the timeframe that may be specified by the Director of the Managing City Department; or
2. retain **Program Income** funds to be added to the Project and used to further eligible Project objectives but only if the proposed expenditures are approved by the City; or
3. deduct **Program Income** funds from the total Project cost for the purpose of determining the net cost reimbursed by the City. In this case, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.

(D) Contractor must include this Section 4.11, in its entirety, in all of its subcontracts involving income-producing services or activities.

- 4.12 City shall not be obligated to any third parties of Contractor (including any subcontractors or third party beneficiaries of Contractor) under this Contract.
- 4.13 Contractor shall maintain a financial management and accounting records system that provides the following:
- 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 VII of this Contract. If accrual basis reports are required, Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - b. identification of the source and application of funds for City-sponsored activities. The records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - c. effective control over and accountability for all funds, property, and other assets. Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
 - d. identification of separate funds by funding source and project;
 - e. comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by City, financial information should be related to performance and unit cost data;
 - f. procedures to minimize the time elapsing between the transfer of funds from City and the disbursement of said funds by Contractor;
 - g. 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;
 - h. supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
 - i. 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.
 - j. All such records must accurately reflect whether documented funds and expenses fall under **Attachment I (a) or (b).**
- 4.14 The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The City may, in its sole discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract.
- 4.15 Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. City may immediately terminate this Contract if City finds, in its sole discretion, that Contractor's financial condition may impact performance under this Contract. City may consider:
- a. evidence such as the apparent inability of Contractor to meet its financial obligations;
 - b. items that reflect detrimentally on the credit worthiness of Contractor;

- c. pending litigation, liens and encumbrances on the assets of Contractor;
- d. the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property; or
- e. 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. CONTRACT ADMINISTRATION

- 5.1 City-Supported Project. Contractor shall publicly acknowledge that this Project is supported by the City of San Antonio, Economic Development Department. Contractor must 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 City marks or logos, as applicable, to be used.
- 5.2 Contractor shall use the online Contract Management System provided by City for the purpose of submitting all Contract related documents, including, but not limited to, monthly reports, budgets, budget revisions and requests for payment.
- 5.3 If any disagreement or dispute arises between the Parties that pertains to this Contract or any applicable governing rules, regulations, laws, codes or ordinances, then the City Manager, as the City representative ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the Grantor's rules or regulations, if Grant funded, shall have the final authority to render or secure an interpretation.
- 5.4 City may, during normal business hours, inspect the operating facility used by Contractor for the administration of this Contract and may require safety or security measures such as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment funded by this Contract.
- 5.5 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions, including, but not limited to:
 - a. Roster of current Board Members (name, title, address, telephone number and e-mail address);
 - b. Current and any amendments to Bylaws and Charter;
 - c. Terms of Officers;
 - d. Schedule of anticipated board meetings for current Fiscal Year;
 - e. Board Agenda, to be submitted at least three (3) business days prior to each Board meeting; and
 - f. Minutes of board meetings that are approved by the Contractor's board
- 5.6 Contractor must have or comply with the following regarding personnel management:
 - (A) An employee ethics or integrity policy that outlines a) the requirements for employees to conduct themselves in an ethical manner consistent with the values of the Contractor; and b) the process for identifying, investigating, and enforcing potential breaches of the policy.
 - (B) Internal project management procedures to mitigate the risk of theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to reasonably 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.
 - (C) The employee ethics policy and the project management procedures will be provided to the Managing City Department upon request by the Managing City Department.
 - (D) Contractor shall immediately notify City if any unethical, illegal, or potentially fraudulent activity involves or is related to funds provided by City and shall provide City with timely updates on any investigation or inquiry into the activity.

- (E) Contractor represents and warrants that it has conducted a criminal background check, at its own expense, for employees providing services related to this Contract. No employee of Contractor shall be eligible to perform services related to this Contract if he or she, (1) has been convicted of, or was placed in a pre-trial diversion program for, any crime involving dishonesty or breach of trust including, but not limited to, check kiting or passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (2) has been convicted of any weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation, extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use; or 3) is listed on the national register of sex offenders.
- (F) 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.
- (G) Chief Executive Officers (CEOs), directors and other management positions may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, ("Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives may be co-workers in the same Project but only in non-supervisory roles.
- (H) Contractor represents and warrants that Contractor's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all licensing, training, and competency standards promulgated by relevant authoritative or professional bodies. Contractor will 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.
- (I) Contractor must include written job descriptions in personnel folders for each position in the organization funded through this Contract. Job titles and descriptions in the budget (**Attachment II**) that affect a salary or range increase may not be changed without the prior written approval of the Director of the Managing City Department.
- (J) The Director of the Managing City Department may, in his or her sole discretion, approve reimbursement of pay to full time, permanent employees for other than annual or personal leave for the following:
 - 1. To attend Armed Services training, up to 15 business days;
 - 2. To serve as a juror;
 - 3. To attend the funeral of someone in the immediate family, up to 3 days as long as not charged to annual or personal leave. 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 the relative.
 - 4. To attend seminars or workshops.

5.7 The following applies to equipment or intellectual property that was purchased or created with City funds:

- (A) Ownership. City shall own all tangible property, including but not limited to, vehicles, equipment and furniture, purchased with funds received through City. The tangible property shall, at City's sole option, be delivered to the City upon the expiration or termination of this Contract. Contractor must relinquish and transfer possession of and, if applicable, title to tangible property without the requirement of a court order. Tangible property that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. No tangible property purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department.
- (B) Contractor shall maintain records for and provide an annual inventory of tangible property purchased with City funds, to include:
 - 1. A description of the item, including the model and serial number, if applicable;
 - 2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;

3. An indication of whether the item is new or used;
 4. The vendor's name (or transferred from);
 5. The location of the property;
 6. The property number shown on the property tag; and
 7. A list of disposed items and disposition.
- (C) Contractor shall safeguard, maintain and fully insure all City-funded property against fire, loss and theft. Contractor is also solely responsible for reporting and replacing with like property all lost, stolen, missing, damaged, or destroyed property purchased or leased with City funds. All replacement property will be treated in the same manner as property purchased with City funds. All lost, stolen, missing, damaged and/or destroyed property shall be reported to law enforcement agencies as appropriate. Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the property having been lost, stolen, missing, damaged and/or destroyed.

The report submitted by Contractor to the Managing City Department must include:

1. A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
 2. A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
 3. A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.
- (D) Ownership of Intellectual Property. The Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. If City is unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to City.

5.8 Contractor shall comply with the following regarding City-funded travel:

- (A) Travel costs are allowable if:
1. they are approved in the budget;
 2. supported by detailed documentation, for example, conference costs to include itineraries and documentation certifying conference attendance;
 3. travel costs (including per diem rates) are do not exceed those allowed under the City's travel policies and conform to the reimbursement rates under the United States General Services Administration; and
 4. transportation fares are at economy class rates.

- (B) Mileage reimbursement rates must not exceed the City's policy for mileage reimbursement and must comply with IRS rules. To be eligible for mileage reimbursement, the employees must
1. possess a valid Texas Driver's License and liability insurance as required by law; and
 2. record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep the record on file for City inspection, if requested. Mileage records are subject to spot-checks by City.

Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

- 5.9 Contractor shall take referrals from City's Youth Re-engagement Centers for potential enrollment in its applicable programs.
- 5.10 If appropriate, Contractor shall refer clients to Workforce Solutions Alamo for possible co-enrollment.

VI. AUDIT

- 6.1 If Contractor expends \$750,000 or more of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contractor must complete an independent audit and submit the audit report within the earlier of:
- a. 30 calendar days after receipt of the auditor's report(s); or
 - b. 9 months after the end of Contractor's fiscal year; or
 - c. 9 months after the expiration or early termination of this Contract.

Contractor must furnish the Managing City Department a copy of the corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within 30 calendar days of receipt of the audit report or upon submission of the corrective action plan to the auditor.

If Contractor is notified of federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within 10 calendar days of receipt of the report.

- 6.2 If Contractor expends less than \$750,000 of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then Contractor must complete and submit an unaudited financial statement(s) within the earlier of:
- a. 9 months following the end of Contractor's fiscal year; or
 - b. 9 months following expiration or early termination of this Contract.

The financial statement must include the following 1) a balance sheet and income statement prepared by a bookkeeper, 2) a cover letter signed by Contractor attesting to the correctness of the financial statement, and 3) a schedule of receipts and disbursements by budgeted cost category for each project funded by the City.

- 6.3 If Contractor receives or expends more than \$750,000 in federal funds from City, then an audit must be conducted 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 (Uniform Guidance). Contractor shall submit copies of its annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or 9 months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana.

Contractor may submit reports through the following website:

<https://harvester.census.gov/facides/Account/Login.aspx> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

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

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

Contractor agrees to reimburse City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.

- 6.4 City may conduct or have an audit conducted or conduct a review of the use of funds and documentation associated with this Contract. City is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by City, may perform such audit(s) or reviews. Contractor must make available to City all accounting and Project records.
- 6.5 Contractor, 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, must make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract 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. The records shall be maintained for the required retention period, except if there is pending litigation or if the audit report has not been accepted, then Contractor shall retain the records for as long City requires retention. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.
- 6.6 If an audit or examination determines that the Contractor has expended funds or incurred costs which may be inconsistent with this Contract or if the applicable state or federal governing agency raises compliance issues, then Contractor shall be notified and provided an opportunity to address the issues.
- 6.7 City shall provide Contractor written notification if reimbursed expenses or charges are disallowed by the City because of review or audit findings. The Managing City Department may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Contractor to fully refund the disallowed amounts by cashier's check or money order within ten days after receipt of written notification. Contractor may not reduce Project expenditures if City opts to deduct disallowed expenses or charges from future reimbursements.
- 6.8 Any expenses for the collection of delinquent debts owed by Contractor are the sole responsibility of Contractor and shall not be paid from any Project funds.
- 6.9 If City determines following performance of an audit, in its sole discretion, that Contractor is in violation of Contract requirements, the City may require the Contractor pay for the audit from non-City resources.

VII. RECORDS AND REPORTING

- 7.1 The Managing City Department is responsible for monitoring, fiscal control, and evaluation of this Project.
 - (A) Contractor shall submit to the Managing City Department **Contract Monitoring Reports** no later than the 15th day of every month detailing the actual services delivered and outcomes achieved against the

- projected performance measures, and shall attach documentation supporting the same, for the month preceding the submission. A separate Contract Monitoring Report is required for the services detailed in **Attachment I (a)** and those in **Attachment I (b)**. Contract Monitoring Reports containing projected monthly performance measures for the services detailed in **Attachment I (a)** and those in **Attachment I (b)** covering the entire Contract term are attached and incorporated as **Attachment IV**.
- (B) At such times and in such form as may be required by the Managing City Department, Contractor shall prepare and submit to the Managing City Department or the Grantor of applicable grant funds any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Contract.
- (C) Within 30 days from the expiration or termination of this Contract, Contractor shall submit all final reports and deliverables to City along with a receipt for all sums and a release of all claims against the Project.

Contractor represents that all information in reports submitted to City is accurate and that supporting documentation shall be maintained. Contractor shall, upon reasonable request, allow and facilitate interviews or discussions with its personnel, board members and Project participants.

- 7.2 Contractor shall not disclose information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City, which is marked "confidential" or for which City informs Contractor is "confidential," including, without limitation, reports, records, 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 under this Contract. Contractor shall protect the Confidential Information and shall take the necessary steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VII, Section 7.2, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VII, Section 7.2 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 request at the expiration or termination of this Contract, Contractor shall deliver to City all copies of materials related to the Project, including the Confidential Information.
- 7.3 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 represents that no 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.
- 7.4 Contractor shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.2 (C) of this Contract
- 7.5 Contractor shall supply any data required by City for use with the Viridis platform, a pilot program which will track individuals through their learning experience, validate any and all applicable skills or proficiencies and may match individuals to internships, apprenticeships, continuing and supplemental education, and/or jobs. The Viridis platform will also track post-employment data. Contractor will cooperate fully with the implementation of the pilot program.

VIII. INSURANCE

- 8.1 Contractor will comply with the **Insurance Requirements** attached and incorporated as **Attachment V**.

IX. INDEMNITY

- 9.1 **CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:**

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 CONTRACT, 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 CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IF CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

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

X. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

THIS SECTION INTENTIONALLY LEFT BLANK

XI. COMPLIANCE WITH LAWS

- 11.1 Contractor shall comply with all applicable federal, state and local laws, rules and regulations, codes, charters, ordinances, rules, regulations, policies, and procedures, and any and all amendments or additions to these as they may be promulgated, applicable to the services provided by, or funds received by Contractor hereunder, as directed by the City or as required in this Contract. Failure to comply with applicable laws may subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.2 Additionally, Contractor shall comply with the following:
- (A) If using City of San Antonio General Funds, expenditures shall be made in accordance with:
1. Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
 2. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services

- (B) The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988.
- (C) Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slrn/recordspubs/gr.html>
- (D) 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>. 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 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 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.
- (E) 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.
- (F) Additionally, Contractor shall comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
1. Title VII of the Civil Rights Act of 1964, as amended;
 2. Section 504 of the Rehabilitation Act of 1973, as amended;
 3. The Age Discrimination Act of 1975, as amended;
 4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 5. Fair Labor Standards Act of 1938, as amended;
 6. Equal Pay Act of 1963, P.L. 88-38;
 7. Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and
 8. All applicable regulations implementing the above laws.
- (G) Contractor shall comply with all applicable local, state, and federal employment laws including, but not limited to:
1. worker's compensation;
 2. unemployment insurance;
 3. timely deposits of payroll deductions;
 4. 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;
 5. Occupational Safety and Health Act regulations; and
 6. Employee Retirement Income Security Act of 1974, P.L. 93-406.
- (H) 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.

- (I) Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
1. does not boycott Israel; and
 2. will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, Contractor, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Contract. City hereby relies on Contractor's verification. If found to be false, City may terminate this Contract for material breach.

11.3 In addition, if Contractor received federal grant funds through this Contract, Contractor agrees that:

- (A) Contractor shall comply with the 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.
- (B) If federal funds are in excess of \$150,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this Contract and the appropriate EPA Regional Office. Additionally, Contractor agrees to include these requirements in each subcontract to this Contract exceeding \$150,000 financed in whole or in part with federal funds.
- (C) Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. Contractor agrees to include within its subcontracts a requirement that its subcontractors comply with this provision.
- (D) Contractor has tendered to the City a Certification of Restrictions on Lobbying in compliance with the Byrd Anti-lobbying Amendment (31 U.S.C. §1352), and any applicable implementing regulations, if Contractor applied for or bid for an award exceeding \$100,000.00 from the City.
- (E) In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

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 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 12.6 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that by contracting with City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to City a 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, or violate, obligations, covenants, conditions, or stipulations of this Contract, City shall have the right to terminate this Contract in whole or in part by sending written notice to Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the 10th day following the day on which such notice is sent).

- 13.2 Termination for Convenience. This Contract may be terminated in whole or in part by either Party for any reason. Such termination shall specify the effective date thereof, which date shall not be sooner than the 30th day following the day on which notice is sent.
- 13.3 Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination. The question of satisfactory completion of such work shall be determined by City alone, and its decision shall be final.
- 13.4 Notwithstanding any other remedy contained in this Contract 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 City for damages sustained by City by virtue of any breach of this Contract, and City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.

XIV. DEBARMENT

- 14.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal Program. Contractor shall provide immediate written notice to City, in accordance with the notice requirements of **Article XVII**, if, at any time during the term of the Contract, including any renewals, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.
- 14.2 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. AMENDMENT

- 15.1 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 in **Attachment V** 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 3.4, 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 15.1(E); or
- (F) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

XVI. ASSIGNMENT AND SUBCONTRACTING

- 16.1 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.
- 16.2 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of City and Grantor of the grant source, if so required by said Grantor. 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.
- 16.3 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, including those referenced in Section 11.2(A). It is further agreed by the Parties that City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by City. If, in the sole determination of City, it is found Contractor failed to comply with this Section, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination.
- 16.4 Licenses And Training for Subcontractors. Contractor warrants and certifies that Contractor's subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all competency standards promulgated by relevant authoritative bodies, as applicable to the services provided.
- 16.5 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.

XVII. OFFICIAL COMMUNICATIONS

- 17.1 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:
City of San Antonio Economic Development Department
Rene Dominguez, Director
Frost Bank Tower
100 West Houston Street, 19th Floor
San Antonio, Texas 78205

Contractor:
David Zammiello, Executive Director
Project QUEST, Inc.
515 SW 24th Street, Suite #201
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.

XVIII. PROHIBITED ACTIONS

18.1 Political Activity.

- (A) Contractor agrees that no funds provided from or through 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.
- (B) 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.
- (C) The prohibitions set forth in Sections 18.1(A) and 18.1(B) of this Contract include, but are not limited to, the following:
 - 1. 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;
 - 2. 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;
 - 3. 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
 - 4. 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.
- (D) 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, which shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the contact person listed on the statement within the Managing City Department. Contractor shall have each said individual sign a statement acknowledging receipt of the policy.
- (E) 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.
- (F) This Section 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.

- 18.2 Adversarial Proceedings. Contractor agrees that 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. Contractor understands that City may deem Contractor ineligible for consideration to receive any future funding while any adversarial proceedings against City remains unresolved.
- 18.3 No Use of Funds for Religious Activities. 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 benefit, directly or indirectly, any such sectarian or religious facility or activity, or for the construction, operations, maintenance or administration of any sectarian or religious facility or activity.
- 18.4 Contribution Prohibitions. Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for an entity 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 Consolidated Human Development Funding Services Pool Request for Proposal (RFP) is released, and ending on the 30th calendar day following the contract award. 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. Contractor acknowledges that City has identified this Contract as high profile. Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 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.

XIX. MISCELLANEOUS

- 19.1 Independent Contractor. 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 therefor, and that neither Party has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 19.2 Nothing contained in this Contract shall be deemed or construed by the Parties 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.
- 19.3 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.
- 19.4 Non-Waiver. No waiver, change, modification or discharge by either Party 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. 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. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Contract or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.
- 19.5 Venue. 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 to 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.

- 19.6 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.
- 19.7 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 City, it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this 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 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.
- 19.8 Authority. 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 Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to City in its application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.
- 19.9 Entire Contract. This Contract and its attachments, if any, contain all of the terms and conditions agreed upon, constitute the entire and integrated Contract between the Parties, 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:

Project QUEST, Inc.

Rene Dominguez
Economic Development Department, Director

David Zammiello, Executive Director

Date

Date

APPROVED AS TO FORM:

Assistant City Attorney

Board President (if required by Agency)

ATTACHMENTS

Attachment I (a) – Scope of Work and Scorecard for Workforce Development
Attachment I (b) – Scope of Work and Scorecard for Open Cloud Academy
Attachment II – Budget
Attachment III – Funding Guide
Attachment IV – Contract Monitoring Report

Attachment V – Insurance Requirements

STATE OF TEXAS § **AGREEMENTS TO USE FUNDS OF**

 §

COUNTY OF BEXAR § **THE CITY OF SAN ANTONIO**

This Agreement ("AGREEMENT") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager or designee pursuant to Ordinance No. 2018-09-13-____ dated September 13, 2018 and San Antonio for Growth on the Eastside, Inc. ("SAGE"), a Texas non-profit corporation; collectively, the "Parties".

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

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

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

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

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

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

I. GENERAL PROVISIONS

1. SAGE is a non-profit corporation governed by a Board of Directors with a mission of advocating and working for the area business community toward the building and sustaining of a diverse and prosperous economy.
2. SAGE, in furtherance of its mission, grants to small, diverse businesses that are unable to obtain full or partial financing through standard banking institutions.
3. SAGE agrees by the execution of this AGREEMENT to comply with any and all provisions of this AGREEMENT and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.

4. SAGE represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The signer of this AGREEMENT for SAGE represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of SAGE and to bind SAGE to all terms, performances and provisions herein contained.
6. In the event that a dispute arises as to the legal authority of either SAGE, or the person signing on behalf of SAGE, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, SAGE shall be liable to CITY for any money it has received from CITY for performance of any of the provisions herein.
7. SAGE understands that the funds provided pursuant to this AGREEMENT are funds which have been made available by CITY's ICIF fund and General fund and SAGE will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. SAGE and CITY agree that SAGE is an independent contractor, that SAGE shall be responsible to all Parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. SAGE understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either Party shall have the option of terminating this AGREEMENT by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either Party exercises the option of terminating this AGREEMENT, any and all unused funds either allocated and in possession of SAGE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to SAGE under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to SAGE.
10. SAGE understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, SAGE agrees that, at such time as any revisions are so made during the Term hereof, this AGREEMENT will be amended to include such revisions. In the event that SAGE does not agree to any changes, SAGE shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. SAGE shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
11. SAGE understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in the ICIF fund and/or General Fund expenditures, agreements funded by CITY's ICIF fund and/or General Fund, including

this AGREEMENT may, at CITY's option, be reduced in a like manner. CITY will attempt to provide SAGE with as much advance notice of a potential funding reduction as is possible to allow SAGE to make budget adjustments.

12. In no event shall CITY be liable for any expense of SAGE not eligible or allowable hereunder.
13. Should SAGE fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director of the City's CCDO, or if SAGE should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to SAGE of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - A. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude CITY's termination right for successive breach of the same condition.
 - B. Notwithstanding the above, SAGE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
 - C. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by ordinance that SAGE's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for SAGE to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
14. Should this AGREEMENT be terminated by either Party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT as determined solely by CITY after consultation with SAGE, SAGE shall refund unused funds either allocated and in possession of SAGE or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to SAGE under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to SAGE.
15. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2018 and shall terminate on September 30, 2019. This AGREEMENT may be renewed annually, for up to two (2) years, subject to appropriation of funds by City Council.
16. SAGE shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. CITY shall review, and SAGE shall allow review of, SAGE's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.

17. SAGE warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of SAGE or CITY.
18. SAGE may leverage funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's CCDO.
19. SAGE is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in this AGREEMENT and ATTACHMENT I and has contributed to the cause of realizing such objectives.
20. SAGE acknowledges that this AGREEMENT cannot be assigned without the express written consent of CITY's CCDO.
21. SAGE shall not use funds from this AGREEMENT for purposes other than those listed in Section II of this Contract without prior written consent of the CITY's CCDO.

II. SCOPE OF SERVICES

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

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

of year 2018 and 2019 funding commitments from all other specified sources for SAGE, if any.

- b. SAGE shall provide CITY's CCDO quarterly budget reports outlining contributions and expenditures (to include all sources of funding).
 - c. SAGE shall submit all required and requested documents to CITY's CCDO for proper review of SAGE expenditures and activities. Any requests for Fiscal Year 2020 funding must be submitted to CITY's CCDO by June 1, 2019.
4. The CITY's CCDO is assigned monitoring responsibility for this AGREEMENT. SAGE will provide City's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of SAGE's books, records and files on the objectives covered by this AGREEMENT. SAGE understands that CITY may require any and all books, records and files of SAGE necessary to ensure SAGE's compliance and use of generally accepted governmental accounting principles.
- a. All such records shall continue to be available for inspection and audit for a period of five (5) years after the termination date hereof. However, if an audit or investigation of SAGE begins during the course of this five-year period, then SAGE is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. SAGE agrees that during the term of this AGREEMENT, any duly authorized representative of CITY's CCDO shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.
 - c. The submission of falsified information or the failure to timely submit all information by SAGE as requested by CITY is grounds for termination of this AGREEMENT.
5. SAGE agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. SAGE will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
6. SAGE agrees to establish internal procedures that ensure that employees funded or partially funded by this AGREEMENT have an established complaint and grievance policy.
- a. Such grievance policy shall include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.

- b. In the event no complaint and grievance policy has been established, SAGE shall follow the procedures outlined in the San Antonio Municipal Civil Service rules in regard to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
2. SAGE will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds under this AGREEMENT to assure separation of funds, unless otherwise approved by the CITY's CCDO.
3. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the Director of CCDO.
4. **To the extent allowed by law, SAGE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal or bodily injury, death and property damage made upon the CITY directly or indirectly arising out of, resulting from or related to SAGE'S activities under this Agreement, including any acts or omissions of SAGE, any agent, officer, director, representative, employee, consultant or subcontractor of SAGE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death or property damage. IN THE EVENT SAGE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

5. Upon completion or termination of the objectives as described in this AGREEMENT, any unused funds, rebates or credits must immediately be returned by SAGE to CITY.
6. SAGE shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
7. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, SAGE will immediately refund such amount to CITY. SAGE further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The CITY's CCDO has the express authority to deduct such claims from subsequent reimbursements.
8. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following 30 days after a written request by City, SAGE shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of SAGE read the entire AGREEMENT, including all attachments, between the CITY and SAGE, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.
 - c. All CITY-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both SAGE and subcontractors related to this AGREEMENT.
 - d. If SAGE expends \$50,000.00 or more in General Fund dollars during the term of this AGREEMENT, then SAGE shall furnish the CITY'S CCDO and other City Departments designated by the CCDO with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of SAGE's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from SAGE stating whether or not the terms and conditions of the AGREEMENT were met. If the CITY determines, in its sole discretion, that SAGE is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to

conduct the required audit and to have SAGE pay for such audit. In addition, when SAGE has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.

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

IV. INSURANCE REQUIREMENTS

1. Prior to the commencement of any work under this AGREEMENT, SAGE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's CCDO, which shall be clearly labeled "San Antonio for Growth on the Eastside Agreement To Use Funds" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate and endorsements have been received and approved by the City's CCDO. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
2. The CITY reserves the right to review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. In no instance will CITY allow modification whereby CITY may incur increased risk.
3. SAGE's financial integrity is of interest to the CITY; therefore, subject to SAGE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, SAGE shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at SAGE's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent contractors	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

Products/Completed Operations Personal Injury Contractual Liability Damage to property rented by you.	\$100,000
2. Directors and Officers (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

4. SAGE agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of SAGE herein, and provide a certificate of insurance and endorsement that names the SAGE and the CITY as additional insureds. SAGE shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the AGREEMENT for all purposes.
5. As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). SAGE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. SAGE shall pay any costs incurred resulting from said changes.

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

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

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SAGE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend SAGE's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
 8. In addition to any other remedies the CITY may have upon SAGE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order SAGE to stop work hereunder, and/or withhold any payment(s) which become due to SAGE hereunder until SAGE demonstrates compliance with the requirements hereof.
 9. Nothing herein contained shall be construed as limiting in any way the extent to which SAGE may be held responsible for payments of damages to persons or property resulting from SAGE's or its subcontractors' performance of the work covered under this AGREEMENT.
 10. It is agreed that SAGE's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY for liability arising out of operations under this AGREEMENT.
 11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
 12. SAGE and any Subcontractors are responsible for all damage to their own equipment and/or property.

V. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION POLICY

1. SAGE agrees to post in a conspicuous place available to employees and applicants for employment funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. SAGE will, in all solicitations or advertisements for employees placed by or on behalf of SAGE, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation.
3. Non-Discrimination. As a party to this AGREEMENT, SAGE understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
4. SAGE agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. SAGE will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
5. In the event of SAGE's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and SAGE may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. SAGE further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of SAGE on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of SAGE;

- c. No litigation or proceedings are presently pending or threatened against SAGE or, if pending, have been disclosed by SAGE in writing to CITY;
- d. None of the provisions contained herein contravene or in any way conflict with the authority under which SAGE is doing business, or with the provisions of any existing indenture or agreement of SAGE;
- e. SAGE has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
- f. None of the assets of SAGE are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by SAGE to CITY.

VII. LEGAL/LITIGATION EXPENSES

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

VIII. CHANGES AND AMENDMENTS

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

2. It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

IX. SEVERABILITY OF PROVISIONS

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

X. NON-WAIVER OF PERFORMANCE

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by any Party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

1. All SAGE invoices for eligible expenditures pursuant to this AGREEMENT must be submitted to City's CCDO by SAGE no later than ninety (90) days after SAGE incurs the expense.
2. SAGE understands and agrees that SAGE is required to refund money, pursuant to SO(R) HB 1196, that SAGE has received from CITY through this Agreement, in the event of SAGE's conviction of knowingly employing an undocumented worker, with repayment

required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

XII. ENTIRE AGREEMENT

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

XIII. NOTICE

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

CITY:

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

SAGE:

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

and

City Attorney's Office
100 South Flores
San Antonio, Texas 78205

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

XIV. PARTIES BOUND

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

XV. GENDER

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

XVI. RELATIONSHIP OF PARTIES

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

XVII. TEXAS LAW TO APPLY

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

XVIII. CAPTIONS

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

EXECUTED IN DUPLICATE ORIGINALS this ____ day of _____ 2018.

CITY OF SAN ANTONIO

SAN ANTONIO FOR GROWTH EASTSIDE

Lori Houston
Assistant City Manager

Jackie L. Gorman
Executive Director

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

Fiscal Agent: - SAGE will maintain a separate checking account for ICIF funds

Potential Use of Funds for Economic Development Purposes:

1. Grants to businesses/projects

Process Flow of Funds:

Grant Program -

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

Reporting

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

ATTACHMENT II**SAGE
FY2019 BUDGET**

Operations (General Fund)	\$258,668.00
Façade Program (General Fund - Inner City Incentives)	\$100,000.00
TOTAL FY 2019 FUNDING	\$358,668.00

Operations (General Fund)

	Commitment Item	FY 2019 PROPOSED
5201040	Fees to Prof Contr.	\$258,668.00
CONTRACTUAL SERVICES		\$258,668.00

Façade Program (Inner City Incentive Fund)

	Commitment Item	FY 2019 PROPOSED
5201040	Fees to Prof Contr.	\$100,000.00
CONTRACTUAL SERVICES		\$100,000.00

STATE OF TEXAS §
§
COUNTY OF BEXAR §

FUNDING AGREEMENT

This Agreement is hereby made and entered into by and between the CITY OF SAN ANTONIO, a Texas municipal corporation (referred to as "City"), acting by and through its City Manager, or designee and San Antonio for Growth on the Eastside, Inc., a Texas Non-profit Corporation (referred to as "Grantee"), acting by and through its duly authorized Chief Executive Officer, and together referred to as the "Parties."

WHEREAS, the expenditure of public funds through this Agreement serves the public purposes of providing for the basic health, safety, and welfare of San Antonio residents by funding a plan that addresses the revitalization of distressed communities into sustainable neighborhoods with improved schools, and greater human services, employment and private investment; and

WHEREAS, the Grantee advocates for, and works towards, development, growth and improved quality of life for residents, in the City of San Antonio's Eastside; and

WHEREAS, the City has therefore identified Grantee as the appropriate party to assist in the fulfillment of the public purposes identified in this Agreement; and

WHEREAS, the Grantee shall expend the funds provided under this Agreement in accordance with all applicable laws of public funding; and

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

1.01 The purpose of this Agreement is to establish the terms and conditions under which Grantee will implement the EastPoint/Promise Zone Neighborhood Sustainability Plan (otherwise known as Phase II) (the "Project").

II. TERM

2.01 The term of this Agreement shall commence on October 1, 2018 and continue until September 30, 2019 unless this Agreement is terminated earlier by the City pursuant to the provisions for termination in this Agreement (the "Term").

III. DESIGNATED REPRESENTATIVES

3.01 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Chief Executive Officer shall be Grantee's designated representative responsible for the administration and management of this Agreement.

3.02 The Director of the City's Department of Neighborhood and Housing Services or his or her designee shall be responsible for the administration of this Agreement on behalf of City.

3.03 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 3.01 and 3.02 hereinabove.

IV. RESPONSIBILITIES OF GRANTEE; SCOPE OF WORK

4.01 Grantee will provide, oversee, administer, and carry out all activities and services in compliance with this Agreement, including the **Scope of Work and Budget** attached hereto and incorporated herein for all purposes as Attachment I. The Director of the Department of Neighborhood and Housing Services may agree to an amendment of this Agreement without further action by City Council in order to revise Attachment I, so long as modifications are consistent with, and in furtherance of, the Project.

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.01 Grantee warrants and represents that it will comply with all applicable federal, state and local laws and regulations in the performance of the obligations set forth in this Agreement. Grantee also agrees to require by written agreement that its consultants, contractors and subcontractors (and their respective officers, agents, employees, directors and representatives) shall be responsible for spending funds, purchasing goods or performing services paid for with funds provided through this Agreement in compliance with applicable federal, state and local laws and regulations.

5.02 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, Grantee, if it meets the definition of "Company," hereby verifies that it does not boycott Israel,

and will not boycott Israel during the term of the Agreement. City hereby relies on Grantee's verification. If found to be false, City may terminate this Agreement for material breach.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$114,000.00, which the Parties have agreed will be advanced to Grantee.

6.02 City shall neither be obligated nor liable under this Agreement to any third party for payment of any monies or provision of any goods or services. All other costs beyond that which are provided as payment / reimbursement to Grantee under this Agreement are the sole responsibility of Grantee.

6.03 In those instances in which advance payments are authorized:

- (A) Grantee's payments to its vendors or contractors using funds advanced by the City shall be remitted to the vendors or contractors in a prompt and timely manner so long as services have been performed by the subject vendor.
- (B) The Grantee must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Grantee's total deposits in said bank, including all City funds deposited with said bank, exceed the FDIC insurance limit, the Grantee must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Grantee from the Grantee's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Grantee'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. Grantee 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 Agreement Term, or from a single subsequent monthly reimbursement the full amount previously advanced to Grantee. The City may consider factors such as projected allowable costs and other indicators such as Grantee's financial stability. Grantee shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

6.04 Grantee shall account for expenses in accordance with the following procedure:

- (A) Grantee shall submit applicable documentation supporting Grantee's expenditure

in question to Director of the Department of Neighborhood and Housing Services or his or her designee on a monthly basis. Grantee shall certify on with each monthly documentation submission that the expenditures for which Grantee sought advancement were made in compliance with federal, state and local laws.

- (B) The Director of the Department of Neighborhood and Housing Services or his or her designee shall review the monthly expenditure documentation submitted by Grantee, notify Grantee of its approval or disapproval, and indicate the balance of funds advanced for which the Grantee must still account.

6.05 City shall provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money previously provided by City to Grantee 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 For the period described in Section 6.07, Grantee agrees to maintain readily identifiable 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.

6.07 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities related to this Agreement for a minimum of four (4) years from the expiration or early termination of this Agreement. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four (4) year period, if the City so requests.

6.08 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6.05 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) days of City's written request therefor wherein the amount disallowed or disapproved shall be specified. Costs shall be considered allowable only if so approved in Grantee's budget, 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.

VII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

7.01 Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City is, 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) 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 affect 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.

VIII. ACCESSIBILITY OF RECORDS AND MONITORING; REPORTING

8.01 At any time and as often as City may deem reasonable and necessary, upon three (3) business 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.

8.02 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.

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

8.04 The Grantee shall submit to the Department of Neighborhood and Housing Services such reports as may be required by the City, including a Metrics Report which reflects Grantee's completion and compliance of metrics as compared to document attached and incorporated herein as Attachment II. Grantee shall submit a completed Metrics Report no later than the 1st day of every month which shall reflect the actual services delivered and outcomes achieved against the proposed total metrics for all months preceding the submission. The Grantee ensures that all information contained in all required reports submitted to City is accurate and

support documentation shall be maintained.

IX. INDEMNITY, LIMITATION OF LIABILITY

9.01 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 CONSULTANT'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.

9.02 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.

9.03 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.

9.04 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 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 GRANTEE or any subcontractor under worker's compensation or other employee benefit acts.

X. INSURANCE

10.01 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 Department of Neighborhood and Housing Services, which shall be clearly labeled "Implementation of the EastPoint/Promise Zone Neighborhood Sustainability Plan" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the Department of Neighborhood and Housing Services. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.02 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.

10.03 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. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability* (Claims made basis) To be maintained and	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall

<u>TYPE</u>	<u>AMOUNTS</u>
in effect for no less than two years subsequent to the completion of the professional service	become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* if applicable	

10.04 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Grantee. 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.

10.05 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 required endorsements. Grantee shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Grantee shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Department of Neighborhood and Housing Services
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- 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, or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

10.08 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.

10.09 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.

10.10 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.

10.11 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.

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

XI. TERMINATION

11.01 City has the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Grantee has failed to comply with any term of this Agreement. City will provide Grantee with written notification as to the nature of the non-compliance, and give Grantee a thirty (30) day period from the date of the City's written notification to cure any issue of non-compliance. Should Grantee fail to cure any default within this period of time, City may terminate this Agreement immediately by providing written notice to Grantee and withhold further payments to Grantee.

11.02 Within thirty (30) days of termination of this Agreement, Grantee shall return to the City all funds that the City finds, within its sole discretion, to be a disallowable expenditure under this Agreement. Within thirty (30) days after the expiration or termination of this Agreement, Grantee shall also turn over to the City copies of all records, documents, files and other instruments in its possession pertaining to the Grantee's performance under this Agreement, if so requested by the City.

XII. NONDISCRIMINATION

12.01 As a party to this Agreement, 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.

XIII. CONFLICT OF INTEREST

13.01 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.

13.02 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.

13.03 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

13.04 Pursuant to the subsection above, Grantee warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Grantee does not cause a City employee or officer to have a prohibited financial interest in the Agreement. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIV. POLITICAL OR RELIGIOUS ACTIVITY

14.01 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.

14.02 None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee 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.

XV. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

15.01 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.

XVI. CONTRACTING

16.01 Any work or services subcontracted hereunder shall be approved by the City, 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. It is Grantee's responsibility to ensure compliance by subcontractors of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

16.02 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.

16.03 By signing this Agreement, Grantee certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in programs with the City.

XVII. CHANGES AND AMENDMENTS

17.01 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.

17.02 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.

XVIII. ASSIGNMENT

18.01 Neither party shall 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 the other party. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XIX. SEVERABILITY OF PROVISIONS

19.01 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.

XX. NON-WAIVER OF PERFORMANCE

20.01 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.

20.02 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.

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

XXI. ENTIRE AGREEMENT

21.01 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 be in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXII. NOTICES

22.01 For purposes of this Agreement, all official communications and notices between the Parties shall be deemed sufficient if in writing and delivered personally with acknowledgement of receipt, or mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Director, Department of Neighborhood and Housing
Services
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: San Antonio for Growth on the Eastside, Inc.
Attention: Chief Executive Officer
220 Chestnut
San Antonio, Texas 78202

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.

XXIII. PARTIES BOUND

23.01 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.

XXIV. RELATIONSHIP OF PARTIES

24.01 Grantee is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

XXV. TEXAS LAW TO APPLY

25.01 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 and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

XXVI. GENDER

26.01 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.

XXVII. CAPTIONS

27.01 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.

XXVIII. LEGAL AUTHORITY

28.01 Each of the City and 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.

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

XXIX. MISCELLANEOUS

29.01 Remedies Cumulative. All rights, options and remedies of the Parties contained in this Agreement shall be cumulative of the other, and either party shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Agreement.

29.02 Time of the Essence. Time is of the essence in this Agreement. The Parties will comply with any timing requirements stated in this Agreement, subject only to Force Majeure and use any and all reasonable efforts to cure any delay caused by Force Majeure. If the date specified in this Agreement for giving any notice or taking any action is not a business day (or if the period during which any notice is required to be given or any action taken expires on a date that is not a business day), then the date for giving such notice or taking such action shall be the next day that is a business day.

29.03 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and its successors, and nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

29.04 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

29.05 Force Majeure. Both Parties shall be excused from performance (except for payment obligations), and shall incur no liability for any loss or damage due to any delay or failure to perform its obligations under this Agreement when caused by occurrences beyond the reasonable control of the affected party (“**Force Majeure**”), including, but not limited to, riots, wars or hostilities between any nations, acts of God, fires, storms, floods, earthquakes, labor disputes or strikes, shortages or curtailments of raw materials, and power or other utility services. Performance shall be excused hereunder only if the affected party delivers written notice of the occurrence, including a full description thereof, to the other party and endeavors to remedy such non-performance with all reasonable dispatch.

[Signature page to follow]

This Agreement has been executed effective as of the date of signature of the last party to sign (the “Effective Date”).

CITY OF SAN ANTONIO, TEXAS

**SAN ANTONIO FOR GROWTH ON THE
EASTSIDE, INC., A TEXAS NON-PROFIT
CORPORATION**

By: _____
**VERÓNICA R. SOTO, AICP, DIRECTOR
DEPARTMENT OF NEIGHBORHOOD
AND HOUSING SERVICES**

By: _____
**JACKIE L. GORMAN
CHIEF EXECUTIVE OFFICER**

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

Attachment I – Scope of Work and Budget
Attachment II – Metrics Report

STATE OF TEXAS
COUNTY OF BEXAR

§
§
§

**AGREEMENT TO USE
FUNDS OF THE
CITY OF SAN ANTONIO**

This Agreement to use funds ("AGREEMENT") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager or designee pursuant to Ordinance No. _____ dated September __, 2018 and the LIFTFUND INC., (hereinafter referred to as "LIFTFUND"), a Texas non-profit corporation, by and through its President and CEO, both of which may be referred to herein collectively as the "Parties".

WHEREAS, LIFTFUND was founded in 1994 in San Antonio, Texas, with the mission of providing: (1) credit and financial services to small business owners who are typically minorities or women, and who do not have access to commercial loans; and (2) leadership and innovation to the micro-lending industry; and

WHEREAS, in support of this mission City Council has allocated and agrees to pay two hundred and fifty thousand and no cents (\$250,000.00) to LIFTFUND for continuation of a loan buy down program (the "Program") previously supported by the City Council in Fiscal Year 2016 and Fiscal Year 2018, which provides reduced interest loans from five hundred and no cents (\$500.00) to two hundred and fifty thousand and no cents (\$250,000.00) at zero percent (0%) interest to qualifying local small, minority, and women-owned businesses and entrepreneurs, with a particular emphasis on qualifying African- American Owned Businesses, as well as those who are currently performing on a City of San Antonio contract, and result in the creation of new full-time permanent jobs in the City; and

WHEREAS, Program participants must be located in or locating within the San Antonio city limits, with particular emphasis on qualifying business located in SA Tomorrow Comprehensive Plan's Regional Centers; and

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

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

I. GENERAL PROVISIONS

1. LIFTFUND agrees by the execution of this AGREEMENT to comply with any and all provisions of this AGREEMENT and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.

2. LIFTFUND 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.
3. The party signing this AGREEMENT for LIFTFUND represents, warrants, assures and guarantees that she has full legal authority to execute this AGREEMENT on behalf of LIFTFUND and to bind LIFTFUND to all terms, performances and provisions herein contained.
4. In the event that a dispute arises as to the legal authority of either LIFTFUND, or the person signing on behalf of LIFTFUND, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, LIFTFUND shall be liable to CITY for any money it has received from CITY for performance of any of the provisions herein.
5. LIFTFUND understands that the funds provided pursuant to this AGREEMENT are funds which have been made available from the CITY's General Fund and LIFTFUND will therefore comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
6. LIFTFUND and CITY agree that LIFTFUND is an independent contractor, that LIFTFUND shall be responsible to all parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
7. LIFTFUND understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either Party shall have the option of terminating this AGREEMENT by giving the other Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
8. LIFTFUND understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council. LIFTFUND therefore agrees that, at such time as any revisions are so made during the Term hereof, this AGREEMENT will be amended to include such revisions. In the event that LIFTFUND does not agree to any changes, LIFTFUND shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. LIFTFUND shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
9. LIFTFUND understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund and/or expenditures, 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 LIFTFUND with as much advance notice of a potential funding reduction as is possible to allow LIFTFUND to make budget adjustments.

10. In no event shall CITY be liable for any expense of LIFTFUND not eligible or allowable under this AGREEMENT.
11. Should LIFTFUND fail to fulfill in a timely and proper manner the obligations under this AGREEMENT, as determined solely by the Director, or if LIFTFUND should violate any of the covenants, conditions or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to LIFTFUND of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same, nor preclude CITY's termination right for successive breach of the same condition.
 - b. Notwithstanding the above, LIFTFUND shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this AGREEMENT at any time upon a finding by ordinance that LIFTFUND's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for LIFTFUND to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
12. Should this AGREEMENT be terminated by any Party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT, as determined solely by CITY after consultation with LIFTFUND, LIFTFUND shall refund any and all unused funds either allocated and in possession of LIFTFUND 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 LIFTFUND under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to LIFTFUND.
13. Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall begin on October 1, 2018 and shall terminate on September 30, 2019 (the "Term"). This agreement may be extended at the option of CITY and LIFTFUND for additional terms, contingent upon appropriation of funds and approval of the City Council.
14. LIFTFUND shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent frauds and program abuse. CITY shall review, and LIFTFUND shall allow review of, LIFTFUND's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.
15. LIFTFUND warrants that no person or selling agency has been employed or retained

to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage or contingent fee and further, that no such understanding or agreement exists, or has existed, with any employee of LIFTFUND or CITY.

16. LIFTFUND may leverage funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval of the Director.
17. LIFTFUND is authorized to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in this AGREEMENT and has contributed to the cause of realizing such objectives.
18. LIFTFUND acknowledges that this AGREEMENT cannot be assigned without the express written consent of the Director.

II. SCOPE OF SERVICES AND FUNDING

1. LIFTFUND shall utilize up to Two Hundred Fifty Thousand Dollars and No cents (\$250,000.00) provided by CITY for the funding of the Program described above.
2. The Program is a fee-for-services model whereby LIFTFUND will submit an invoice to the City quarterly for loans made during the previous quarter (see Section XI.1). LIFTFUND shall include with each invoice 1) itemize reports summarizing loans made for the previous quarter and 2) attach supporting documentations showing those loans have been executed and made to qualified businesses. Reports shall include business name, demographics (gender, ethnicity, veterans status, industry), geography (address, identification of City Council District the business resides, identification of SA Tomorrow Comprehensive Plan's Regional Centers, loan amounts, loan terms, loan interest rates, loan default rates, buy down amount per loan, identification if the businesses is a startup or established, and job retention and creation (full-time jobs, part-time jobs) by the business. In addition to the quarterly reports, five client success stories must be provided by LIFTFUND to the CITY annually detailing how the funds were utilized and how it helped their businesses grow. Client stories should be provided to EDD no later than June 30, 2019.
 - a. All such records shall continue to be available for inspection and audit for a period of five (5) years after the termination date hereof. However, if an audit or investigation of LIFTFUND begins during the course of this five-year period, then LIFTFUND is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. LIFTFUND agrees that during the Term of this AGREEMENT, any duly authorized representative of the 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. Additionally, LIFTFUND agrees to provide all previously completed audit(s) to CITY upon request.

- c. The submission of falsified information or the failure to timely submit all information by LIFTFUND as requested by CITY is grounds for termination of this AGREEMENT.
3. LIFTFUND agrees to meet the following aspirational goals in providing loans to local, small, minority and women-owned businesses as indicated below. If the aspirational goals are not achieved, please provide good faith efforts to meet the goals, such as marketing and outreach efforts. These efforts must be approved by the Director or designee of EDD.
- | Aspirational Goal Type | Aspirational Goal Percentage |
|----------------------------|------------------------------|
| Small Business | 100% |
| Minority Business | 60% |
| African American Business | 15% |
| Asian American Business | 10% |
| Hispanic American Business | 35% |
| Women Business | 30% |
| Veteran Business | 10% |
4. LIFTFUND agrees to administer loans to a minimum of 40 local, small, minority, and women-owned businesses totaling a minimum of eight hundred thousand and no cents (\$800,000.00). If these minimum thresholds are not achieved, please provide a good faith effort to meet requirement. These efforts must be approved by the Director or designee of EDD.
5. LIFTFUND agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. LIFTFUND will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
6. LIFTFUND agrees to establish internal procedures that ensure employees funded or partially funded by this AGREEMENT have an established complaint and grievance policy.
- a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
- b. In the event no complaint and grievance policy has been established, LIFTFUND will follow the procedures outlined in the San Antonio Municipal Civil Service rules in regard to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

1. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.

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

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

3. Upon completion or termination of the objectives as described in this AGREEMENT, any unused funds, rebates or credits must immediately be returned by LIFTFUND to CITY.
4. LIFTFUND 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.
5. 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, LIFTFUND will immediately refund such amount to CITY. LIFTFUND further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments, if any. The Director has the express authority to deduct such claims from subsequent reimbursements.
6. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT.

Following thirty (30) days after a written request by City, LIFTFUND shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.

- b. It is imperative any auditor performing an audit of LIFTFUND read the entire AGREEMENT, including all attachments, between the CITY and LIFTFUND, since the budget and financial compliance of the AGREEMENT is only a portion of the total contractual obligation.
 - c. All City-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY auditors. This includes the auditing of both LIFTFUND and its subcontractors related to this AGREEMENT.
 - d. If LIFTFUND expends fifty thousand dollars and no cents (\$50,000.00) or more in funds provided by CITY during the Term of this AGREEMENT, then LIFTFUND shall furnish the Director and other City departments designated by the Director, with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of LIFTFUND's fiscal year or within thirty days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review; audit exceptions and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from LIFTFUND stating whether or not the terms and conditions of the AGREEMENT were met. If the CITY determines, in its sole discretion, that LIFTFUND is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have LIFTFUND pay for such audit. In addition, when LIFTFUND has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this AGREEMENT, the audit shall be conducted in accordance with the Single Audit Act Agreements of 1996 and the U.S. Office of Management and Budget Circular A-133 (latest revision), and/or the State of Texas Single Audit Circular.
7. LIFTFUND understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting.

IV. INSURANCE REQUIREMENTS

- 1. Prior to the commencement of any work under this AGREEMENT, LIFTFUND shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the EDD, which shall be clearly labeled "LIFTFUND" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate and endorsements have been received and approved by the CITY's Risk Manager. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

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

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For bodily injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent, in Umbrella or Excess Liability Coverage
2. Directors and Officers (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

5. As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). LIFTFUND 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. LIFTFUND shall pay any costs incurred resulting from said changes.

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

6. LIFTFUND agrees that with respect to the above-required insurance, such insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the CITY of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LIFTFUND shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LIFTFUND's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
8. In addition to any other remedies the CITY may have upon LIFTFUND'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 LIFTFUND to stop work hereunder, and/or withhold any payment(s) which become due to LIFTFUND hereunder until LIFTFUND demonstrates compliance with the requirements hereof.

9. Nothing herein contained shall be construed as limiting in any way the extent to which LIFTFUND may be held responsible for payments of damages to persons or property resulting from LIFTFUND's or its subcontractors' performance of the work covered under this AGREEMENT.
10. It is agreed that LIFTFUND'S insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY for liability arising out of operations under this AGREEMENT.

11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
12. LIFTFUND and any LIFTFUND subcontractors are responsible for all damage to their own equipment and/or property.

V. EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. LIFTFUND agrees to post in a conspicuous place available to employees, applicants for employment and contractors funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
2. LIFTFUND will, in all solicitations or advertisements for employees or contractors placed by or on behalf of LIFTFUND, state that all qualified applicants will receive fair consideration for employment or contract without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, veterans status or political belief or affiliation.
3. LIFTFUND agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. LIFTFUND will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
4. LIFTFUND covenants and agrees that LIFTFUND will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Facility, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas. In the event of LIFTFUND's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and LIFTFUND may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. LIFTFUND further represents and warrants that:
 - a. All information, data or reports provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of LIFTFUND on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of LIFTFUND;

- c. No litigation or proceedings are presently pending or threatened against LIFTFUND or, if pending, have been disclosed by LIFTFUND in writing to CITY;
- d. None of the provisions contained herein contravene or in any way conflict with the authority under which LIFTFUND is doing business, or with the provisions of any existing indenture or agreement of LIFTFUND;
- e. LIFTFUND has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
- f. None of the assets of LIFTFUND are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by LIFTFUND to CITY.

VII. LEGAL/LITIGATION EXPENSES

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

VIII. CHANGES AND AGREEMENTS

- 1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by agreement in writing executed by both CITY and LIFTFUND, as authorized by City Council and the Board of the LIFTFUND. Notwithstanding the foregoing, the Director may execute amendments that do not relate to the City's funding under this AGREEMENT.
- 2. It is understood and agreed by the Parties that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

IX. SEVERABILITY OF PROVISIONS

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

X. NON-WAIVER OF PERFORMANCE

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by any Party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

1. All LIFTFUND invoices or reports regarding eligible expenditures pursuant to this AGREEMENT must be submitted by LIFTFUND to the EDD no later than thirty (30) days after the following quarter after LIFTFUND incurs the expense. The quarterly reporting is due as follows for Fiscal Year 2019 and will apply similarly to each City Fiscal Year thereafter until the program concludes:

 Quarter 1: October 1, 2018 to December 31, 2018. Report due January 31, 2019
 Quarter 2: January 1, 2019 to March 31, 2019. Report due April 30, 2019
 Quarter 3: April 1, 2019 to June 30, 2019. Report due July 31, 2019
 Quarter 4: July 1, 2019 to September 30, 2019. Report due October 31, 2019
2. LIFTFUND understands and agrees that LIFTFUND is required to refund money, pursuant to 80(R) HB 1196, that LIFTFUND has received from CITY through this AGREEMENT, in the event of LIFTFUND's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

XII. ENTIRE AGREEMENT

This AGREEMENT constitutes the final and entire agreement between the Parties 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 thereof, and duly executed by the Parties.

XIII. NOTICE

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

CITY:

Director
Economic Development
Department
P.O. Box 839966
San Antonio, TX 78283-3966

City Attorney's Office
Commercial Division City
Hall, 3rd Floor
San Antonio, Texas 78205

and

LIFTFUND:

Executive Director 2007
West Martin Street
San Antonio, Texas 78207

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

XIV. PARTIES BOUND

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

XV. GENDER

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

XVI. RELATIONSHIP OF PARTIES

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

XVII. TEXAS LAW TO APPLY

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

XVIII. CAPTIONS

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

EXECUTED IN TRIPLICATE ORIGINALS this _____ day of _____, 2018

CITY OF SAN ANTONIO

LIFTFUND

Carlos Contreras
Assistant City Manager

Janie Barrera
President & CEO

APPROVED AS TO FORM:

**RENEWAL AND FIRST AMENDMENT OF THE
PROFESSIONAL SERVICES AGREEMENT WITH LAUNCH SA
EXECUTED ON [DATE]**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Renewal 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, pursuant to Ordinance No. 2013-11-07-0755 passed and approved on the 11th day of November, 2013, and most recently Ordinance No. XXXX-XX-XX-XXXX passed and approved on the X day of , 2018 and LiftFund, Inc., by and through its President and CEO (hereinafter referred to as “Consultant”), 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

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

“Launch SA” shall mean the City-owned program operated and managed by Consultant in the Program Space to provide entrepreneurship education and mentoring, as well as to serve as a resource and referral clearinghouse for business information. City shall at all times retain all rights, including intellectual property and common law rights, ownership and use of the term, name and program concept concerning and related to Launch SA and relating to Café Commerce, the organizational predecessor to Launch SA.

“Advisory Board” shall have the meaning set forth in Section 3.3.

“Assets” is defined as hard assets including, but not limited to, furnishings, computers and computer hardware, telephone systems, and other tangible personal property purchased for the benefit of Launch SA using funds obtained by the City. Assets shall also mean tangible personal property purchased for the benefit of Launch SA using City funds disbursed to LiftFund under previous Agreements and in previous budget years. Such Assets shall bear a tag identifying those assets as the property of the City of San Antonio.

“Audit” shall have the meaning set forth in Article V.

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

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

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

“Library Director” shall mean the Director of the City’s San Antonio Public Library Department.

“Phase I Space” and “Phase II Space” shall mean the areas indicated on the attached Exhibit D.

“Program Space” shall mean both Phase I Space and Phase II Space.

“Board of Trustees” shall mean the San Antonio Public Library Board of Trustees, the legal board with ultimate legal authority regarding the regulation and use of the all library properties.

“Original Agreement” shall mean the Professional Services Agreement between City and Launch SA executed on November 11, 2013 pursuant to Ordinance 2013-11-07-0755.

II. TERM

2.1 In accordance with the provisions of the Original Agreement under Article II, *Term*, City is exercising its contractual right to renew the Original Agreement for an additional five (5) year period. Unless sooner terminated in accordance with the provisions of this Renewal Agreement under Article VII *Termination*, the term of this Renewal Agreement shall be for a period of five (5) years and shall commence on October 1, 2018 and terminate on September 30, 2023. This Renewal Agreement constitutes the first renewal as authorized under the Original Agreement and pursuant to the provisions of Article II, *Term* in the Original Agreement.

2.2 If funding for the term of the Renewal Agreement (described in Article IV Compensation) 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

Consultant agrees to provide the services described in this Article III entitled *Scope of Services* in exchange for the compensation described in Article IV *Compensation*. This *Scope of Services* shall supersede the Scope of Services contained within the Original Agreement. Consultant shall:

3.1 Market and brand Launch SA, on behalf of City, independently from Consultant, provided however that Consultant may refer to the program as “Launch SA, powered by LiftFund”. Launch SA shall not be marketed or branded in any way with Consultant and Launch SA and Consultant shall remain independent of one another in this respect. Launch shall also

meet the following scope of work below as it relates to marketing:

3.1.1 Submit and obtain annual approval from the Director or designee of the City's Economic Development Department regarding an annual marketing plan for Launch SA services and programming. The annual marketing plan should contain diverse advertising strategies based on Launch SA measuring various outreach channels' impact into increasing Launch SA's client base.

3.1.2 Periodically offer informational events or workshops related to Launch SA programs in the "Program Space" and locations throughout the city to market Launch SA. Library Events Services staff should be made aware of all Launch SA related events occurring in the Central Library or "Program Space" five (5) days prior to the event date. Also, any Launch SA related event that is anticipated to attract an audience of 50+ persons is considered a large scale event and must be shared with Library Events Services at least ten (10) business days prior to the event date. For large scale events it is recommended that Launch SA staff contact the Parking Division to make arrangements, as needed, for the garage. Any such arrangements should be communicated Library Events Services and the Library's Parking Division liaison no less than five (5) days prior to the event. Arrangements for use of Library furniture must also be arranged no less than ten (10) business days in advance through Library Events Services.

3.1.3 Work cooperatively with area agencies and organizations on other entrepreneurship events and programs.

3.1.4 Launch SA staff shall attend City of San Antonio events and any local events not hosted by the City of San Antonio as requested by the Director or designee of the City's Economic Development Department in order to market Launch SA and the services it provides the community, provided that such events do not conflict with previously scheduled Launch SA programs or events and ample notice of the request has been provided to Launch SA.

3.2 Establish an accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) in a manner separate and distinct from Consultant. All accounts or funds established pursuant to the terms of this Agreement or for the benefit of Launch SA shall be subject to Audit at the request of City. All Assets held by Consultant on behalf of Launch SA and acquired with funds obtained for the benefit of Launch SA on behalf of City shall bear a tag identifying that the asset is the property of the City.

3.3 Establish and provide staffing and support to a minimum requirement of a five (5) member Advisory Board that consists of entrepreneurs who represent the diversity of the City of San Antonio. The Director or designee of the City's Economic Development Department will serve on the Advisory Board. The Advisory Board will advise and provide recommendations to Consultant concerning operation and management of Launch SA and implementation of services described in this Article. The Advisory Board members shall be appointed by Consultant in consultation with the City Council Economic and Workforce Development Committee ("EWDC") of City. Advisory Board members will serve the length of a three (3) year term with no limit on the number of renewal terms available.

3.4 Launch SA shall maintain operating hours of at least eight (8) hours per weekday (Monday through Friday, except holiday as recognized by the Central Library), with such operating hours to coincide with those of the Central Library, with the ability to adjust said hours based on a future analysis of hours of use and traffic, contingent upon City approval. During those operating hours, Launch SA shall make bilingual customer service available. In addition to these regular operating hours, Launch SA shall make its services available on an appointment-only basis on weekends and during times outside of weekday operating hours. Note the Consultant shall develop written protocol for afterhours Launch SA appointments and events that are mutually agreed upon by the Director or designee of the Library Department and Economic Development Department.

3.5 Launch SA will manage content on a digital platform mutually agreed upon by the City and Consultant. The digital platform should strive to be searchable by Launch SA clients to identify business resource partners, make and track referrals to business resource partners, consolidate community-wide entrepreneurial events, and track other relevant information such as business name or individual name, address, City Council District the business or individual resides, ethnicity, gender, veteran status, industry, startup or established, years in business, and primary reason for seeking assistance. The digital platform and associated data shall be co-owned by the City and Contractor. Should this agreement terminate or if Consultant no longer manages Launch SA all data would be provided to the City or any successor organization or entity that operates Launch SA or a similar, successor program as designated by the City.

3.6 Work cooperatively with existing area small business resource partners and provide space for at least two business development partners to relocate offices and staff or maintain a satellite office with staff occupying said office in alignment with Launch SA operating hours within the Launch SA Program Space.

3.7 Host an annual pitch competition that will provide business owners the opportunity to obtain knowledge and mentorship through individual challenges and personalized milestones in an effort to be awarded funding by Launch SA and community partners as funds are available.

3.8 Host weekly opportunities for local entrepreneurs to present their business ideas to an audience of fellow entrepreneurs, advisors and mentors.

3.9 Host a minimum of 3 accelerator cohort programs that culminate in a demo event showcasing the talents of the participating entrepreneurs.

3.10 Provide business consulting services and referrals to business resource partners to Launch SA clients.

3.11 Develop and present an annual report each year upon request of the Director or designee of the City's Economic Development Department to groups such as City Council and the Library Board of Trustees.

Requirements Concerning Program Space at the San Antonio Central Library:

Programming components of Launch SA shall be headquartered at the San Antonio Central Library (600 Soledad St., San Antonio, TX, 78205), an asset of the City of San Antonio which shall be used by Consultant to perform the Scope of Services set out in Section III. Phase I and Phase II of the Program Space shall be occupied at all times, unless a vacancy arises, to which the Consultant agrees to occupy the Program Space within 90 days with programming in alignment with the Scope of Services set out in Section III and as approved by the Director or designee of the City's Economic Development Department and Library Department. Library staff may occupy or reserve office space in the "Program Space", as needed, upon approval from Launch SA staff. City shall have the option in its sole discretion to modify the Program Space to suit future needs or purposes of the City. In the event modifications to the Program Space are deemed necessary or desirable, the City shall provide Consultant with written notice of the modifications no later than sixty (60) days prior to implementing such modifications. Notwithstanding the above, City shall exercise reasonable efforts to identify space where Consultant may relocate its operation of the Launch SA, in whole or part. Consultant shall be responsible for day to day maintenance of the Program Space including housekeeping as further detailed below. Consultant shall control the public access to and from the Program Space into the Library. Consultant shall comply with all reasonable policies established by the San Antonio Public Library with regard to utilities, security, access, alcohol consumption, political advocacy, and noise levels associated with the Program Space.

Consultant covenants and agrees to comply with the following conditions, commitments and restrictions with regard to its utilization of space within the San Antonio Public Library:

- Obey all applicable laws relating to the use, condition, and occupancy of the Premises and Building and any requirements imposed by utility companies serving or insurance companies covering the Premises or Building.
- Allow authorized representatives of the San Antonio Public Library to enter the Premises to inspect the spaces as needed for routine operations for the Central Library. A cooperative inspection of the condition of the spaces will occur no less than annually with mutually agreed upon remediation of any issues occurring in a timely fashion.
- Use the "Program Space" for appropriate intended programmatic and service proposes in a manner that is consistent with the policies set forth by the San Antonio Public Library Board of Trustees for library locations.
- The Consultant will be responsible for maintaining the Program Space in good, safe and clean operating condition and repair, reasonable wear, tear, acts of God, or unavoidable accident insured casualty loss, only excepted. The Consultant shall not commit or permit any waste to the Program Space.
- Consultant shall provide custodial services within the program space with cleaning standards matching or exceeding Library's standards.
- Consultant shall maintain and repair all furniture, fixtures, and finishes in the program space.

- Consultant shall provide any security personnel as it deems necessary and said security personnel will adhere to the policies and procedures established by the Library. Library security contractors shall not be assigned to provide security to the Program Space.
- Consultant shall install an alarm system and pay for a monitoring service, as allowable in relation to the Library's alarm system. Consultant shall coordinate with Library to establish response protocol in connection with such monitoring.
- Consultant shall install and pay for hard-line internet and telephone service.
 - Public Wi-Fi is available to the operators of Launch SA at no cost, but in accordance with Library's Internet Use Policy.
 - Use of hard-line internet must adhere to provisions laid out in Texas Penal Code Section 43.24.
- Consultant shall ensure that its employees and patrons adhere to the San Antonio Public Library's Patron Conduct Policy and Internet Use Policy when utilizing the San Antonio Public Library Wi-Fi.
- Consultant shall follow proper Emergency Response and Evacuation procedures, as communicated by the Central Library Administrator and shall participate in all security and safety drills and training required for the Central Library.
- Consultant shall follow established procedures to request use of auditorium or meeting rooms outside of the Program Space. It shall be within the sole discretion of the San Antonio Public Library to waive fees for uses which are identified as directly related to the operation of Launch SA.
- Consultant shall establish Launch SA regular operating hours for the Phase I portion of the project and shall work with Library staff and security in controlling access from the Phase I space into the Library. Consultant and the San Antonio Public Library will jointly determine the operating hours for the Phase II space. The San Antonio Public Library may give prior approval to extending hours for special events or programs on a case by case basis.
- Consultant shall not attempt to lease or sublicense the Program Space or equipment. Any person or entity operating in the Program Space shall be operating under the direct supervision of Consultant. This provision shall in no way be read as a limitation on Consultant entering into contractual relationships with non-profit agencies providing complimentary or similar outcome based services out of the Program Space in the Library.
- Any and all branding or signage involving the San Antonio Public Library shall be subject to the prior written approval of the San Antonio Public Library Board of Trustees. Consultant agrees to consult with Library staff prior to developing any signage or branding to ensure a smooth approval process for all signage.
- Consultant covenants and agrees that all signage, including temporary signage, will be in accordance with library policy and practice including receiving approval from the Library's Marketing Team where appropriate.
- The sidewalk in front of the Launch SA Program Space will remain unobstructed. This space will not be controlled by Consultant or considered part of Launch SA Program Space.

- The circle drive in front of the Library is available for commercial loading or unloading at intervals according to established San Antonio Public Library policies and Consultant agrees to abide by such policies.
- Launch SA staff and clients will not have dedicated restroom facilities, but shall have access to the Library restrooms adjacent to the Launch SA Program Space Phase I during mutually agreed operating hours of Launch SA.
- Consultant agrees to hold the City harmless for any theft, damages or destruction of signs, goods and/or other property of the Consultant on the Premises during the term of this Contract and after the Consultant vacates the licensed premises or upon expiration or termination of this Contract. The Consultant shall be fully and solely responsible for safeguarding and maintaining all such property.
- Upon termination of this Contract the Consultant shall promptly remove all personal property of the Consultant from the Premises. If any property placed by the Consultant upon the Premises is not removed by the Consultant within thirty (30) days after expiration or termination of this Contract, then the City may remove same without further notice, or liability or obligation therefore and may dispose of same in any manner the City so chooses. The Consultant shall be liable to the City for any expense the City encounters in such removal and proper disposal.

3.14 As pursuant to the Original Agreement, Consultant was paid and matched City funding up to \$800,000 (1 for 1) with a cash or in-kind match (the "Matching Funds") within five (5) years of the Original Agreement contract award. As pursuant to this First Renewal and Amendment, Consultant shall be paid and match City funding up to \$800,000 (1 for 1) with a cash or in-kind match within five (5) years of the First Renewal and Amendment contract award. The matching funds shall be used to enhance and supplement the services provided at Launch SA. Consultant's in-kind match to City funding achieved through loans provided to Launch SA clients shall not exceed 50% of the in-kind match. Loans made to clients that resulted from contact with Consultant prior to being served through Launch SA shall not be eligible toward this in-kind match. The interest rate on loans to Launch SA clients shall not exceed fifteen percent A.P.R. (15%) for loans between five hundred dollars (\$500.00) to one hundred thousand dollars (\$100,000.00); and shall not exceed eight percent A.P.R. (8%) for loans from one hundred and one thousand dollars to two hundred fifty thousand dollars (\$100,001.00 to \$250,000.00). Consultant shall provide information from multiple financial sources to Launch SA clients in need of loan offerings. No funds obtained from City, whether provided through City's General Fund or through grant funds, shall be used or counted toward Consultant's in-kind match.

3.20 Consultant agrees to abide by the following regarding intellectual property rights:

Consultant shall pay all licensing fees from Compensation funding provided by City pursuant to Article IV. 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.

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 shall immediately:

Either:

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,

Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and

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.

Consultant further agrees to:

Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement; and

Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and

Indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

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; and

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; and

The liability claimed shall not have arisen out of the City's negligent act or omission, and 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.

Ownership and Licenses.

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 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, no such local government records produced by or on the 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 officials or employees pursuant to law including an ordinance, or in the transaction of official business. The term “local government record” shall exclude any confidential or proprietary materials prepared by, or provided to Consultant by, participants in the programs referenced in Article III above, which shall remain the property of the participant.

Consultant acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by any contract awarded by the City, will belong to and be the property of City. Consultant shall be required to turn over to City all such records as required by said contract. Consultant shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City’s written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

3.21 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The Director shall rely solely on the provisions of Article III *Scope of Services* in determining whether satisfactory performance has been achieved. City shall have the right to terminate this Agreement, in accordance with Article VII. *Termination*, in whole or in part, should Consultant’s work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory manner, as determined solely by Director pursuant to Section 3.21, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed eight hundred thousand dollars and no cents (\$800,000.00) as Compensation over a period of five (5) years, as per the initial term of the contract, and as amended, an additional eight hundred thousand dollars and no cents (\$800,000.00) as Compensation over an additional five (5) years per the first renewal term of the contract. The sum of the compensation to Consultant under the Original Agreement and this First Renewal and Amendment shall not exceed total Compensation of one million six hundred thousand dollars and no cents (\$1,600,000.00), subject to appropriation and Consultant matching funds and/or in-kind services.

4.1.1 Payments will be made on a quarterly basis following the provision of invoices by Consultant. Consultant shall submit payment invoices to the City on a quarterly basis. Payment invoices shall be accompanied by quarterly progress reports as well as matching funds documentation. Consultant shall begin to remit invoices beginning on October 1, 2018 throughout the initial and first renewal term of the Agreement based on the following schedule and subject to Consultant's matching fund requirements as established in Section 4.1.2.

Initial Term		
Fiscal Year	Quarterly Payment	Annual Total
Initial Payment	N/A	\$100,000.00
FY 2014	\$37,500.00	\$150,000.00
FY 2015	\$50,000.00	\$200,000.00
FY 2016	\$37,500.00	\$150,000.00
FY 2017	\$25,000.00	\$100,000.00
FY 2018	\$25,000.00	\$100,000.00
Total		\$800,000.00
First Renewal Term		
Fiscal Year	Quarterly Payment	Annual Total
FY 2019	\$40,000.00	\$160,000.00
FY 2020	\$40,000.00	\$160,000.00
FY 2021	\$40,000.00	\$160,000.00
FY 2022	\$40,000.00	\$160,000.00
FY 2023	\$40,000.00	\$160,000.00
Total		\$800,000.00

4.1.2 In addition to the Compensation referenced in Section 4.1, Consultant shall raise Matching Funds in an amount equal to the total Compensation paid by the City pursuant to the budget schedule in Exhibit B and Exhibit C. These Matching Funds may consist of grants, charitable contributions, loans made to Launch SA clients, or in-kind services provided by

Consultant. The Matching Funds shall be derived solely from private or public funds. In addition, no more than half of the match funding requirement shall be provided through in-kind services.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. Total payments to Consultant 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 Director or their designee. Payment will be made to Consultant following written approval of the final work products and services by Director or their designee. 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.

4.4 On a quarterly basis, Consultant shall provide documentation of matching funds secured, or in-kind services provided, that are equal to the amount of funding received from the City in association with this Agreement. In the event that Consultant fails to secure the required amount of match funding or in-kind services within a particular year, the remaining amount of match funding or in-kind services will carry forward into the following contract term. No funds shall be paid to the Consultant during the final year of the initial five (5) year term and final year of the first five (5) year renewal term until match funding or in-kind service requirements from previous years are achieved and documented.

4.5 Only loans extended to Launch SA clients after the opening date of Launch SA shall qualify for the match funding requirement associated with this Agreement in compliance with Section 3.19.

V. AUDIT RIGHTS

5.1 Consultant shall provide to the City all reports relating to the performance of services under this Agreement requested by City including, but not limited to, reviewed financial statements, reports and accounting of services rendered, and any related documents. Consultant shall provide financial and progress reports Quarterly in a reasonable time frame as determined by City. Consultant shall also provide any other reports or documents to City within five (5) business days after Consultant receives City's written request, unless the Parties agree in writing to a longer period of time.

5.2 City may require Consultant to submit reports in a format that is reasonably requested by the City and its designated Auditor. Consultant may seek prior approval of the format in which information shall be provided to City.

5.3 Periodic audits, described further below, may be required during the term and any approved option term of this Agreement.

5.4 City's Audit: City or its authorized representative shall at all reasonable times, upon prior reasonable notice, have the right to examine, inspect and audit all books, papers, bank records and accounts of Consultant related to Launch SA as necessary to determine the accuracy of reports relative to this Agreement. The cost and expenses incurred by City incident thereto shall be the sole responsibility of and borne by City. Such records shall be maintained by Consultant for a period of four (4) years after the termination of the initial term of this Agreement and any applicable option term and shall be made available for inspection and/or audit by City or their agents on the Program Space or at Consultant's facility.

5.5 Consultant's Audit: City may require Consultant to perform an audit by an independent auditing firm approved by City no more than two (2) times during the term of this Agreement. The cost of the audits will be shared equally by City and Consultant unless the Auditor finds discrepancies in the use of funds made under this Agreement, in which case Consultant shall pay for all costs associated with the Audit. A copy of all Audit Reports and Management Letters prepared as a result of such audit shall be provided to City.

5.6 Either Consultant or City may dispute the findings of audits performed pursuant to this Agreement within thirty (30) days of receiving the results of said audit. The Party electing to dispute the audit results shall within thirty (30) days following receipt of the audit report submit such additional information as may be required to correct the auditors report.

VI. RECORDS RETENTION

6.1 Consultant 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 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of five (5) 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, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant 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 Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, 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 shall be subject to automatic termination by City without written notice in the event of the filing of a petition by Consultant under the bankruptcy laws of the United States or the dissolution of Consultant's business as presently being conducted.

7.2.1 Termination Without Cause. This Agreement may be terminated by City without cause upon 60 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*; or

7.3.2 Material breach of the terms of this Agreement, as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should Consultant 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. Consultant shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article VIII. *Notice*, to cure such default. If Consultant fails to cure the default within such thirty-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 Consultant 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 Consultant against Consultant'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required.

7.4.4 Performing unsatisfactorily as defined in Article III *Scope of Services*.

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, provided, however, that City shall be required to compensate Consultant for services performed through the termination date.

7.6 Termination By Consultant. If at any time during the initial term, Consultant determines that performance under the Agreement is impossible or impractical, Consultant shall have the right to terminate the Agreement. This section does not relieve Consultant of its obligation to make a good faith effort to fully perform under the terms of this Agreement. In the case of such a termination, Consultant shall provide City with sixty (60) days notice of its intent to terminate the Agreement pursuant to this section. City shall be required to compensate Consultant for services performed through the termination date. Should Consultant exercise its right to terminate the Agreement under this Section, Consultant is required to provide documentation to the City that all Matching Funds requirements through the date of termination have been met.

7.7 Regardless of how this Agreement is terminated, Consultant shall effect 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 Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant 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 Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.8 Within thirty (30) days of the effective date of completion, or termination or expiration of this Agreement, all Assets and funding provided by City, and/or held by Consultant or any 501(c)(3) corporation established by Consultant to carry out the Scope of Services set out in Section III herein, shall be delivered to City or other agreed-upon organization.

7.9 Within forty-five (45) 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. Failure by Consultant 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 Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.10 Upon the effective date of expiration or termination of this Agreement, Consultant

shall cease all operations of work being performed by Consultant or its subcontractors, if any, pursuant to this Agreement.

7.11 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

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 FedEx 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
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Consultant, to:

LiftFund
Attn: President
2007 W. Martin St.
San Antonio, TX 78207

IX. OWNERSHIP OF DOCUMENTS

Any and all 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 without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

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. The foregoing expressly excludes documents or other materials created and/or owned by participants in any programming referenced in Article III above, regardless of whether that material is provided to Consultant.

X. NON-DISCRIMINATION

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.

XI. INSURANCE

11.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City's Economic Development Department and Risk Management Department, and which shall be clearly labeled "Launch SA Contract" 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 Risk Management Department, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

11.2 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.

11.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, 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 A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<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. Sexual Abuse/Molestation g. 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 g. \$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

11.4 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). Consultant 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. Consultant shall pay any costs incurred resulting from said changes.

11.5 Consultant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

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

11.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Consultant shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days notice after the change, if the Consultant 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
Risk Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

11.7 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, 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 Consultant to maintain said insurance or secure such endorsement. In addition to any other remedies the 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, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

11.8 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 Agreement.

11.9 It is agreed that Consultant'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.

XII. INDEMNIFICATION

12.1 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, 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 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.

12.2 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.

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

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

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant 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 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 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 Consultant under this Agreement and that the Consultant has no authority to bind the City.

13.2 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 the City Council, as evidenced by passage of an ordinance. 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.

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

XIV. SBEDA

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

SBEDA Ordinance Compliance Provisions

A. Solicitation Response and Contract Requirements and Commitment

Consultant understands and agrees that the following provisions shall be requirements of this contract and commits to comply with these requirements.

B. 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.

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 Consultants 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 the 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.

Evaluation Preference – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORS or Consultants.

Good Faith Efforts – documentation of the CONTRACTOR’s or Consultant’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 Consultant’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 Consultant; 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.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

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.

Consultant – 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 Consultant.

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.

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. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

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).

XV. CONFLICT OF INTEREST

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in the Contract. Consultant further warrants and certifies that it has tendered to the City a 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 Consultant, 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. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant 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.

XIX. COMPLIANCE

Consultant 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.

21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXII. LEGAL AUTHORITY

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.

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

25.1 Each of the Exhibits listed below are attached hereto, and incorporated herein for all purposes.

1. Exhibit A – *First Year Annual Budget*
2. Exhibit B – *Initial Five Year Contract Term Budget Projection*
3. Exhibit C – *First Five Year Renewal Contract Term Budget Projection*
3. Exhibit D – *Launch SA Floor Plan – Phase I and Phase II*

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*.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

EXECUTED and **AGREED** to as of the dates shown below.

CITY OF SAN ANTONIO

LIFTFUND

Carlos Contreras
Assistant City Manager
Date: _____

Janie Barrera
President and CEO
Date: _____

Approved as to Form:

Andy Segovia
City Attorney

EXHIBIT A
First Year Annual Budget

EXHIBIT B
Initial Five Year Contract Term Budget Projection

EXHIBIT C
First Five Year Renewal Contract Term Budget Projection

EXHIBIT D
Café Commerce Floor Plan – Phase I and Phase II

STATE OF TEXAS

§
§
§
§INTERLOCAL FUNDING AND
SERVICE AGREEMENT WITH VIA
METROPOLITAN TRANSIT FOR
SERVICE IMPROVEMENTS

COUNTY OF BEXAR

THIS INTERLOCAL FUNDING AND SERVICE AGREEMENT (hereafter referred to as "the Agreement" or "this Agreement") for funding public transportation frequency and capacity improvements is entered into by and between the **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality (hereafter referred to as "City") and **VIA METROPOLITAN TRANSIT**, a Metropolitan Transit Authority created under Chapter 451 of the Texas Transportation Code (hereafter referred to as "VIA"), each acting by and through its officers, hereto duly authorized. City and VIA singularly or collectively shall be referred to herein as "Party" or "the Parties." This Agreement is entered into pursuant to the authority granted by the Interlocal Cooperation Act, Texas Government Code, Chapter 791.

WITNESSETH

WHEREAS, VIA's mission is to provide mass transit services within its service area including the City, as set out and required under its enabling statute, Chapter 451 of the Texas Transportation Code, through which it is authorized to implement and control the manner and means by which to implement its system; and

WHEREAS, lack of adequate funding levels have resulted in VIA providing bus service that is not meeting demand with regard to access, capacity, and frequency, and in July 2015, City Councilman Rey Saldana requested that the policy issue of how the City utilizes its Advanced Transportation District ("ATD") funding be discussed and proposed that the ATD funding be re-allocated to VIA to improve bus service, and

WHEREAS, in January 2016, the City ATD Ad Hoc Committee was established and charged to evaluate VIA's funding model and determine if the City should allocate all or a portion of the City's ATD funds to enhance VIA services, and the Committee held six meetings between February and June 2016 that included an overview of the preferred level of service and potential funding options; and

WHEREAS, the City ATD Ad Hoc Committee recommended that the City transfer \$10 million annually in ATD funds to VIA over a four year period and beyond, the City ATD Fund maintain at least \$5 million annually toward sidewalk funding, the City annual budget strive to maintain funding levels consistent with the fiscal year 2016 levels at \$15 million for sidewalks, and the proposed 2017 Bond Program have a substantial sidewalk program; and

WHEREAS, the Transportation, Technology and Utilities ("TTU") City Council Committee was briefed on the ATD Ad Hoc Committee's recommendation and the impact to the City's ATD Program, and the TTU City Council Committee's recommendation was to have staff explore funding options beyond the City's ATD in order to provide \$10 million in funding annually to VIA, phased-in over a four year period; and

WHEREAS, VIA is primarily funded through a one-half cent sales tax (0.500%) approved by voters in 1977 via the Metropolitan Transit Authority ("MTA") tax and through a one-half of one-quarter cent sales tax (0.250%) approved by voters in 2004 through the ATD; and

WHEREAS, the sales tax revenue VIA receives is less than other major cities, and VIA needs an additional one-half (½) cent to be comparable to other transit authorities, and the current sales tax rate for the City of San Antonio is the maximum allowed by State law (8.25%), and an increase above the current rate would require legislative action; and

WHEREAS, with an additional \$10 million annually in revenue, the City and VIA will be able to initiate action in accordance with the SA Tomorrow and VIA Vision 2040 plans by funding annual operating costs as a result of implementing frequency improvements on nine routes and travel time and capacity improvements on nine major corridors, and VIA will provide the capital funds to purchase up to an additional 30 buses in FY 2018;

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

ARTICLE I **RECITALS**

Each of the above Recitals stated herein above are incorporated into and made a part of this Agreement.

ARTICLE II **PURPOSE**

The purpose of this Agreement is to establish the terms and conditions under which the City will provide funds to VIA (other than the City's ATD funds) to pay for costs related to implementation of public transportation capacity, frequency, and travel time improvements.

ARTICLE III **TERM**

This Agreement shall commence upon the execution date of the last signatory party to the Agreement and is subject to annual appropriation of City funds and review by the Parties.

ARTICLE IV **FINANCIAL COMMITMENT**

The City shall provide the not-to-exceed sum of \$10 million annually in funds to VIA, other than the City's ATD funds, as follows: \$4.3 million for fiscal year 2018 and \$10 million for fiscal year 2019 and beyond. The availability of City funds are subject to appropriation by City Council and no other funds shall be available from the City pursuant to this Agreement. Payments of annual appropriated City funds to VIA will be made in equal quarterly installments during the months of October, January, April, and July. The Parties acknowledge City's Contribution defined in this Agreement.

ARTICLE V **OBLIGATIONS OF CITY**

- 5.1 Pursuant to this Agreement, City shall provide funds to VIA as described in Article IV above.
- 5.2 The City identifies its Director of Transportation & Capital Improvements ("TCI") or his/her designee as its contact person for this Agreement. The City identifies the Director of TCI or his/her designee as the City's Project Manager for the work described in this Agreement.

ARTICLE VI

OBLIGATIONS OF VIA

6.1 Pursuant to this Agreement, VIA shall perform and/or provide the following:

- a. Implement frequency improvements and travel time and capacity improvements to VIA's regular weekday service to be completed in three phases from January 2018 to January 2019 and are as follows:

Phase I to be implemented January 2018

Frequency Improvements on the following Nine Routes to thirty (30) minutes between the hours of 6:00 am to 6:00 pm:

1. #502 Thousand Oaks
2. #602 North Star/Med Center
3. #607 Med Center/Ingram
4. #611 Valley Hi/Kel-Lac
5. #613 Heritage NW/Kel-Lac
6. #615 Kel-Lac/Heritage Park
7. #616 Sky Harbour/Kel-Lac
8. #617 Kel-Lac/Rainbow Hills
9. #618 Ingram/Westlakes

Travel Times and Capacity Improvements on Two Major Corridors - 12 minute or better combined service from 6:00 am to 6:00 pm, improved travel time and use of transit signal priority where available. These two corridors are high-use/high ridership corridors that are not already programmed for Primo-type services and are as follows:

1. Martin Luther King Corridor
2. New Braunfels Corridor

Phase II to be implemented May 2018

Travel Times and Capacity Improvements on Three Major Corridors - 12 minute or better combined service from 6:00 am to 6:00 pm, improved travel time and use of transit signal priority where available. These three corridors are high-use/high ridership corridors that are not already programmed for Primo-type services and are as follows:

1. San Pedro Corridor
2. West Commerce Corridor
3. E. Houston Corridor

Phase III to be implemented January 2019

Travel Times and Capacity Improvements on Four Major Corridors - 12 minute or better combined service from 6:00 am to 6:00 pm, improved travel time and use of transit signal priority where available. These four corridors are high-use/high ridership corridors that are not already programmed for Primo-type services and are as follows:

1. S. Flores Corridor
2. Pleasanton Corridor
3. Culebra Corridor
4. Bandera Corridor

- b. Use the funds provided by the City, as described in this Agreement, to fund the annual operating costs that result from implementing the frequency improvements and travel time and capacity improvements described above.
- 6.2 Upon provision of written notice to the City, VIA may make adjustments to those service improvements funded by the City contribution that vary from those described in provision 6.01(a) above by no more than 23% total for either Frequency Improvements (service adjustment of no more than two of the nine described routes) or Travel Times and Capacity Improvements (no more than two of the nine described major corridors). Except as otherwise provided for in this Article VI, service adjustments exceeding those described above and failure to provide written notice of the same to the City will constitute breach of this Agreement.
- 6.3 If VIA determines that service improvements funded by the City contribution require adjustment(s) that vary from those described in provision 6.01(a) above by more than 23% total for either Frequency Improvements or Travel Times and Capacity Improvements, the Parties agree to meet and confer to discuss such adjustments prior to implementation. If the parties agree to such service adjustments, in writing, the adjustments become part of this Agreement and do not constitute breach of this Agreement. If an agreement cannot be reached, either Party may terminate this Agreement upon thirty (30) day notice to the other Party. Consent to the adjustments shall not be unreasonably withheld.
- 6.4 VIA agrees to provide and use VIA funding to purchase up to an additional thirty (30) buses in fiscal year 2018, sufficient to expand the VIA bus fleet to ensure quality service throughout the VIA service area, including, but not limited to, the service as herein agreed to by the Parties.
- 6.5 VIA hereby identifies its President/CEO or his/her designee as its Project Manager for the work described herein.

ARTICLE VII

PROJECT MANAGEMENT

- 7.1 City and VIA staff shall hold periodic conferences throughout the development and implementation of this public transportation capacity, frequency and travel time improvement project ("Project"). For future meetings with VIA staff, VIA shall provide City with written (e.g.: letter or e-mail) notice at least seventy-two (72) hours in advance, of the location, date, and time of all meetings in order that City representatives may participate.
- 7.2 VIA will manage, oversee, administer and carry out all of the activities and services required for design and implementation of the Project to ensure that the Project is developed, implemented, managed and funded in accordance with the terms of this Agreement and applicable law.
- 7.3 VIA shall promptly furnish City's Designated Representative with copies of all legal notices received by VIA affecting the Project, including, without limitation, notices from governmental authorities, notices from any party claiming default in any payment obligation, and any other notice not of a routine nature. VIA shall promptly notify City's Designated Representative in writing of any suit, proceeding, or action that is initiated or threatened in connection with the Project or against VIA and/or City.
- 7.4 VIA's Project Manager shall issue written notice to City's Project Manager when fifty

percent (50%) and one hundred percent (100%) of the annual funding provided to VIA has been expended.

- 7.5 In accordance with provision 6.02 above, VIA shall issue written notice to City's Project Manager before VIA makes adjustments to those service improvements funded by the City contribution as described in provision 6.01(a) above.
- 7.6 VIA shall maintain the books, records, and documents pertaining to the Project. The City's Project Manager shall have access to, and the right to examine, same upon reasonable notice to VIA's Project Manager.

ARTICLE VIII DEFAULT

In the event of a material breach of this Agreement, the non-breaching Party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The Party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching Party by the end of the thirty (30) day period, the non-breaching Party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount paid by the non-breaching party for the Project.

ARTICLE XIX PRIOR AGREEMENTS SUPERSEDED

This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE X ENTIRE AGREEMENT

This Agreement, including exhibit(s), constitutes the entire Agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. If there is a conflict between or among the provisions of this agreement and any of the following items, the order of precedence shall be as follows: (a) the Agreement, and (b) the exhibits to the Agreement.

ARTICLE XI ASSIGNMENT OR TRANSFER OF INTEREST

Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

ARTICLE XII LEGAL CONSTRUCTION

In case one or more of the provisions contained in this Agreement shall, for any reason, be held

With a copy to: City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

If to VIA: Mr. Jeffrey C. Arndt
 President/CEO
 VIA Metropolitan Transit The
 Grand
 123 N. Medina St.
 San Antonio, TX 78207

ARTICLE XVII
FORCE MAJEURE

Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XVIII
MULTIPLE COUNTERPARTS

This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original, on this 17 day of Oct., 2017. (EFFECTIVE DATE)

CITY OF SAN ANTONIO

For: Christie Chapman
 By: _____
 SHERYL SCULLEY
 City Manager

VIA METROPOLITAN TRANSIT

By: Jeffrey Arndt
 By: _____
 JEFFREY ARNDT
 President/CEO

APPROVED AS TO FORM:

Jeffrey Arndt
 City Attorney's Office_

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AN ORDINANCE 2017-09-14-0652

ADOPTING THE ANNUAL CONSOLIDATED OPERATING AND CAPITAL BUDGETS FOR THE CITY OF SAN ANTONIO FOR FY 2018 THAT BEGINS OCTOBER 1; APPROVING PROJECTS INCLUDED IN THE FY 2018 TO FY 2022 FIVE YEAR INFRASTRUCTURE MANAGEMENT PLAN; APPROVING THE FY 2018 TO FY 2023 SIX-YEAR CAPITAL IMPROVEMENTS PROGRAM FOR THE CITY OF SAN ANTONIO; APPROVING CERTAIN CONTRACTS; PROVIDING FOR A ONE-TIME ANNUITY INCREASE FOR RETIREES AND THEIR BENEFICIARIES AND A REVISION TO THE CITY'S CONTRIBUTION RATE, IN CONNECTION WITH THE TEXAS MUNICIPAL RETIREMENT SYSTEM; AUTHORIZING PERSONNEL COMPLEMENTS; APPROPRIATING FUNDS; AND AMENDING RELATED ORDINANCES.

* * * * *

WHEREAS, in accordance with Article VII of the City Charter, it is necessary to adopt a budget for the period commencing October 1, 2017, and ending September 30, 2018 ("FY 2018"); and

WHEREAS, a Proposed Annual Budget for FY 2018 has been prepared by the City Manager in accordance with Article VII of the City Charter, and presented to the City Council; and

WHEREAS, Community budget input was gathered through the SASpeakUp campaign prior to the development of the Proposed Budget and six Budget Open Houses and two City-Wide Budget Public Hearings were held after the Proposed Budget was presented to City Council on August 10, 2017; and

WHEREAS, following City Council budget work sessions, the Proposed Budget was considered by the City Council on September 14, 2017; and

WHEREAS, after presentation and consideration of several amendments set forth in a statement, as required under Article VII of the City Charter, the City Council by this Ordinance adopts the FY 2018 Budget; **NOW THEREFORE:**

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

SECTION 1. Annual Operating Budget.

The Proposed Annual Budget, as set out in Attachment 1, and as amended by Attachment 2, Attachment 3, Attachment 8, and Attachment 25, all of which are attached hereto and incorporated herein for all purposes, and the following Sections of this Ordinance, is hereby approved and adopted for FY 2018.

SECTION 2. Appropriations.

A. The sums set forth in Attachment 3 are hereby appropriated for FY 2018 for the different City Departments and purposes of the City.

B. The City Manager, through the Director of the Office of Management and Budget, is hereby authorized to distribute funds from the Non-Departmental Budget in the General Fund allocation after a review process is conducted to determine appropriate budget levels for motor fuel.

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activities and \$200,000 for the Cloud Academy, incorporating as attachments, a project-specific scope of work, performance measures and a budget.

- JJ. **San Antonio Growth on the Eastside.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute a contract, in substantially the same form and content as shown in Attachment 54, with San Antonio for Growth on the Eastside for the amount of \$358,668 which is consistent with the appropriations set forth in the FY 2018 Budget. The contract will incorporate a project budget and scope of work.
- KK. **San Antonio for Growth on the Eastside (Sustainability Collective Impact Coordinating Entity).** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute a funding agreement in substantially the same form as shown in Attachment 55, with San Antonio for Growth on the Eastside to serve as the EastPoint Neighborhood Sustainability Collective Coordinating Entity for the amount of \$114,000 which is consistent with the appropriations set forth in the FY 2018 Budget, and to incorporate as attachments, a project-specific scope of work and a budget.
- LL. **Literacy San Antonio.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute a contract in substantially the same form and content as shown in Attachment 56, with Literacy San Antonio in the amount of \$100,000, the SAREads Literacy Academy and Book Bank.
- MM. **LiftFund.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute an agreement, in substantially the same form and content as shown in Attachment 57, with LiftFund Inc for the amount not to exceed \$250,000 for LiftFund Loan Buy Down Program, which is consistent with the appropriations set forth in the FY 2018 Budget.
- NN. **VIA Metropolitan Transit for Bus Service Enhancements.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute an agreement, in substantially the same form and content as shown in Attachment 58, with VIA Metropolitan Transit in the amount of \$4,300,000 for bus service enhancements. The agreement will incorporate obligations by VIA to purchase additional buses and provide frequency improvements, and travel times and capacity improvements along specific bus routes and along specific corridors outlined in the agreement.
- OO. **Northeast Independent School District and San Antonio Sports.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute a Triparty agreement, in substantially the same form and content as shown in Attachment 59, with Northeast Independent School District and San Antonio Sports, in the amount of \$80,000 to construct a sports field and/or other recreation enhancement at Camelot Elementary.
- PP. **Haven for Hope Homeless Encampment Outreach and Support.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute an agreement in substantially the same form and content as shown in Attachment 60, with Haven for Hope in the amount of \$50,000 to support homeless encampment outreach and support, consistent with appropriations set forth in the FY 2018 Budget.
- QQ. **Alamo Area Council of Governments.** Subject to Section 24 of this Ordinance, the City Manager, or her designee, is authorized to execute an agreement in substantially the same form and content as

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SECTION 26. Headings.

The heading of any Section of this Ordinance does not limit or expand the meaning of that Section.

SECTION 27. Effective Date.

Except as otherwise provided above, this Ordinance shall take effect on October 1, 2017.

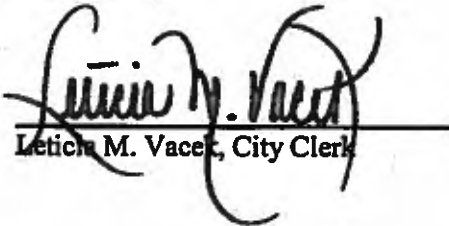
PASSED AND APPROVED THIS 14TH DAY OF SEPTEMBER, 2017.



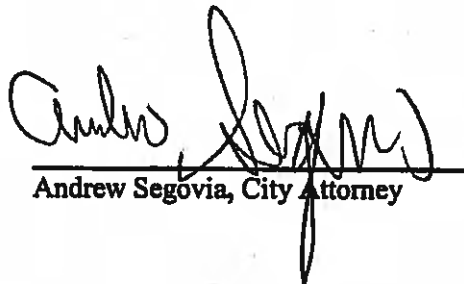
M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

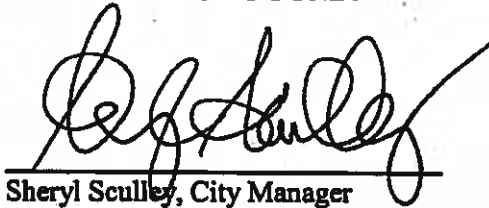


Leticia M. Vacek, City Clerk



Andrew Segovia, City Attorney

APPROVED AS TO FUND:



Sheryl Sculley, City Manager

SCHOOL PARK PROGRAM AGREEMENT

This San Antonio Sports School Park Program Agreement (“Agreement”) is made and entered into by and between the City of San Antonio, a Texas home rule municipality acting by and through its City Manager or her designee, pursuant to Ordinance No. _____, dated _____ (“City”), San Antonio Sports, a non-profit organization (“SAS”), and San Antonio Independent School District (“ISD”).

PREAMBLE:

WHEREAS, the City and ISD are each legally authorized to own, acquire, construct, improve, finance and operate recreational facilities capable of serving both public school purposes and municipal park purposes, and

WHEREAS, SAS has been designated as the non-profit organization that will develop and oversee the School Park Program, which develops public school grounds into parks that benefit both the schools and the public, in San Antonio, and

WHEREAS, the City and SAS desire to increase the availability of park facilities within the boundaries of the City; and

WHEREAS, ISD is willing to improve and operate portions of certain school playgrounds as public parks and recreational facilities through participation in the School Park program; and

WHEREAS, ISD may own and operate athletic and recreational facilities that can also serve as City parks and recreational facilities; and

WHEREAS, \$73,600 in FY 2019 General Funds is available for a School Park project at Lowell Academy;

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises contained herein, City, SAS and ISD hereinafter collectively referred to as the Parties, agree as follows:

I. DEFINITIONS

1. “SAS Representative” shall mean the person designated by SAS to act as its representative in connection with this Agreement.
2. “City Representative” shall mean the person from the Parks and Recreation Department designated by the City to be the City’s representative in connection with this Agreement.
3. “Eligible Expenses” are design, construction, and purchased construction materials for capital improvements within identified School Park. These capital improvements shall be reflected in the project plans found in Exhibit A, Proposed Scope of Project.
4. “ISD Representative” shall mean the person designated by the ISD as its representative in connection with this Agreement.
5. “Park Hours” shall be from sunrise to sunset, excluding those hours when schools are in session or when use of the School Park is necessary for school purposes.
6. “School Park Program” shall mean the cooperative program of the City, SAS, ISD, parent-teacher groups and the community, whereby interested persons may raise cash donations or provide volunteer services or materials for a particular School Park.
7. “School Park ” shall mean a school which: (1) is owned and operated by the ISD; (2) has met the eligibility requirements of the School Park Program; and (3) has been selected by SAS and the ISD and approved by the City for participation in the School Park Program.

II. ISD AND SAS RESPONSIBILITIES AND GRANT OF LICENSEE RIGHTS TO CITY

1. The ISD agrees to review and approve or disapprove, through the ISD Representative, plans developed and submitted by SAS for School Park project. All plans shall be reviewed by, but not limited to, school personnel, parents, and members of the neighboring community. The planned improvements shall be reflected in Exhibit A – Proposed Scope of Project. Upon SAS and ISD have agreed upon School Park plans, the plans shall be forwarded to the City for approval.
2. The ISD agrees to make improvements at the School Park by contracting for those improvements, utilizing ISD employees to make the improvements, and/or through volunteer contribution of labor or materials. Such improvements shall be completed as expeditiously as possible considering the scope of work involved.
3. SAS and ISD agree that all provisions of Exhibit B – Requirements for Eligible Expenses are applicable to the design and construction of School Park improvements.
4. The Parties agree that any improvements to the School Park specified in the plans approved pursuant to as stated herein will be made to the extent of available funding for the particular School Park, in the discretion of the respective Parties.
5. During the term of this Agreement, the ISD grants to City, and City accepts from ISD, a license for use by general public of the School Park subject to the terms and conditions of this Agreement. ISD agrees to keep the School Park open to the general public as public parks for park and recreational purposes during Park Hours. It is agreed that during non-Park Hours or at times when school activities are occurring at a School Park that require the exclusive use of the School Park by the ISD, the general public may be excluded from the School Park. Park Hours may be altered by the agreement of the Parties, with the City's approval through the Parks and Recreation Director; however, the minimum Park Hours will be one hundred fifty (150) hours each calendar month.
6. All improvements made on ISD Property to develop the School Park as public parks shall be and remain the property of the ISD; subject to the City's licensee rights to all School Parks during the term of this Agreement.
7. Neither the City nor SAS shall have any responsibility for the operation or maintenance of School Park nor shall either have any ownership interest in the improvements made by the ISD pursuant to this Agreement.
8. The project planning, design, procurement and construction shall be completed within eighteen (18) months from commencement date of this Agreement. ISD shall follow all applicable procurement laws and internal policies for the School Park, as further referenced in Exhibit B – Requirements for Eligible Expenses.
9. ISD agrees to maintain the School Park Grounds and improvements throughout the term of this Agreement, to include but not limited to mowing, edging, trimming and litter removal to the same extent as performed on similar ISD School Grounds.

III. FUNDING AND REIMBURSEMENT

1. City shall contribute up to \$73,600 to support the School Park project.
2. Prior to reimbursement by City under the terms of this Agreement, each request for reimbursement must be supported by copies of paid invoices, affidavits of bills paid, or evidence of a payment obligation, together with any other documentation reasonably requested by SAS or City. ISD reimbursement requests shall be subject to the review and approval of SAS and then may be forwarded to City for City's review, approval and reimbursement by City to SAS. SAS shall present all properly documented requests for reimbursement to the City Representative.

3. Accompanying each reimbursement request, SAS will submit to City a brief report summarizing the status of each School Park project, along with photographs during periods of construction, such photographs to be provided by ISD.
4. City will provide reimbursement to SAS for Eligible Expenses, and SAS shall promptly provide reimbursement to ISD upon receipt of payment from City.
5. Funding for this project is authorized as of the date of execution of this Agreement until the date of completion of the School Park.

IV. TERM

1. The License granted by ISD to City and all other obligations of the ISD to operate and maintain the School Park as public parks and recreational facilities, all as set out in Article II of this Agreement, shall continue for a period of five (5) years after the completion of the School Park improvements. However, in the event that ISD determines that the School Park is no longer needed for school purposes and is to be sold or leased to another entity, ISD shall either a) continue to operate the School Park for use by the general public, or b) provide an alternate School Park site to serve the same community with similar amenities and benefits. In either of these scenarios, ISD shall be obligated to provide five (5) years of School Park public use.
2. During the term of this Agreement, the ISD may reconfigure a School Park size or location at a particular school site, or relocate a School Park from one location to an alternate location at that same school but first must consult with SAS and City. The costs associated with this reconfiguration or relocation would be borne in full by the ISD.
3. The obligations of the ISD to operate and maintain the School Park as public parks and recreational facilities shall in no way be construed as a dedication of these School Parks as public parks.
4. The term of this Agreement shall commence upon approval by the City's Council and ISD's Board of Trustees and upon execution by all parties, and end contemporaneously with the expiration of the License granted by ISD.

V. INDEMNIFICATION/THIRD PARTY CLAIMS

1. ISD and City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. ISD does not waive its immunities, defenses or limits of liability by entering or performing under this Agreement.

VI. INSURANCE

1. ISD agrees that it is responsible for insuring or cause to be obtained necessary and adequate insurance for its employees and subcontractors for Worker's Compensation or Alternative Plan. ISD shall be responsible for insuring its own property, equipment, autos and legal liability, to the extent require by law.

VII. MISCELLANEOUS PROVISIONS

1. Address and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "notice") provided or permitted to be given, made or accepted by any party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage paid and registered or certified, and addressed to the party to be notified, with return receipt requested, or by hand delivering the same to any responsible officer of such party. Notice deposited in the United States mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is so deposited and notice given in any other manner shall be effective only if and

when received by the party to be notified. For the purpose of notice, the addresses of the Parties are as specified below.

<u>City:</u>	<u>SAS:</u>	<u>ISD:</u>
City of San Antonio	San Antonio Sports	San Antonio ISD
Parks and Recreation Department	P O Box 830386	141 Lavaca St.
114 W Commerce, 11 th Floor	San Antonio, TX 78283	San Antonio, TX 78210
San Antonio, TX 78205	Attn: President	Attn: Superintendent
Attn: Director		

Each party shall have the right, from time to time and at any time, to change its respective address and each party shall have the right to specify as its address any other address, provided that at least fifteen (15) days' written notice is given of such new address to the other Parties.

2. Remedies Cumulative. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided, however, that none of the Parties shall terminate the Agreement except in accordance with the provisions hereof.
3. Non-Waiver. The failure of any party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other Parties hereto; the obligation of such party with respect to such future performance shall continue in full force and effect.
4. Entire Agreement. This Agreement comprises the entire understanding between the Parties. This Agreement may not be altered or amended except in writing executed on behalf of all the Parties.
5. Captions. The captions at the beginning of each Section of this Agreement are guides and labels to assist in location and reading such Sections and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any section or part of this Agreement.
6. Applicable Law. This Agreement is made subject to and shall be construed in accordance with the United States and Texas Constitutions and all applicable federal, state and local law or regulation whether or not expressly set out herein or appended. All obligations hereunder shall be performable in San Antonio, Bexar County, Texas. Any suit filed hereunder shall be filed in Bexar County, Texas.
7. Independent Contractor. The ISD and SAS agree that in performing any service to be rendered hereunder, the ISD, SAS and/or any entity acting on their behalf, is acting as an independent contractor and is not an agent or employee of the City.
8. Assignment. This Agreement shall bind and benefit the respective Parties hereto and their legal successors and shall not be assignable in whole or in part without the approval of all Parties hereto.
9. Parties in Interest. This Agreement shall bind and benefit the Parties hereto and shall not bestow any rights or benefits upon third Parties.
10. Compliance with Exhibits. The ISD, SAS and City agree to abide by the provisions and requirements of Exhibits A and B, attached hereto and made a part herein.
11. Inspections, Audits and Enforcement The City shall have the right to perform, or cause to be performed at City's expense: (1) audits of the books and records of the ISD and SAS, and (2) inspections of all places where work is undertaken in connection with this Agreement. The ISD and SAS shall be required to keep such books and records available for such purpose for at least 3 years after termination of this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of

limitations. The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of ISD, SAS and the City in multiple originals which shall be considered of equal force and effect, as of the _____ day of _____, 20____.

City:
City of San Antonio,
Parks and Recreation Department

SAISD:
San Antonio Independent School District

By: _____
Xavier D. Urrutia, Director

By: _____
Pedro Martinez, Superintendent

Date: _____

Date: _____

Approved as to Form:

San Antonio Sports:

City Attorney

Russ Bookbinder, President & CEO

Date: _____

Date: _____

ATTEST:

City Clerk

Exhibit A – Proposed Scope of Project
Exhibit B – Requirements for Eligible Expenses

EXHIBIT A
PROPOSED SCOPE OF PROJECT

School Site:
San Antonio Independent School District
Lowell Middle School
919 W Thompson Pl
San Antonio, TX 78226

Proposed Scope to be developed and approved by Parties

EXHIBIT B
REQUIREMENTS FOR ELIGIBLE EXPENSES

I. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

1. ISD and SAS agree that compliance with the following, as applicable, is required:
 - a. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (except with regard to work performed by volunteers and ISD employees).
 - b. ISD shall comply with their mandated competitive contracting processes.
 - c. ISD agrees that its construction contractor will comply with Government Code Chapter 2258, and all other laws applicable to labor conditions.
 - d. Texas Accessibility Standards (TAS) established by the Texas Department of Licensing and Regulation (TDLR) under the Elimination of Architectural Barriers Act, Texas Government Code, Chapter 469.
 - e. ISD shall comply with any and all Small Business Economic Development Advocacy (SBEDA) goals assigned to this Agreement.

II. PERMITS AND APPROVALS

1. ISD shall be responsible for securing all necessary and required permits and approvals prior to the start of construction.

III. WAGES

1. ISD 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.
2. 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, the ISD shall cause its Construction 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.
3. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the ISD 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.

STATE OF TEXAS § INTERLOCAL AGREEMENT
§ WITH
COUNTY OF BEXAR § SOUTHWEST INDEPENDENT SCHOOL DISTRICT

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Southwest Independent School District (hereinafter referred to as "SWISD"), a Texas non-profit corporation. SWISD and CITY shall collectively be referred to as "the Parties." This Agreement is entered into by the Parties pursuant to authority granted under the Interlocal Cooperation Act being Chapter 791 of the Texas Government Code, and Texas Local Government Code§ 323.011.

PREAMBLE

WHEREAS, the CITY'S FY19 adopted budget, funds were appropriated to the Parks and Recreation General Fund Operating Budget in support of the "Learn to Swim" Program.

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

1.1 This Agreement shall commence on October 1, 2018 and terminate on September 30, 2019. Services will be completed on a timeline specified as agreed to by the Parties.

II. GENERAL RESPONSIBILITIES

2.1 CITY shall provide \$25,000.00 to offset SWISD's expenses associated with the Lean To Swim Program.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.1 SWISD warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to SWISD, and to SWISD's use of CITY Funds for this project.

3.2 To the extent applicable, SWISD agrees to abide by all applicable laws regarding the expenditure of these city funds.

IV. LEGAL AUTHORITY

4.1 SWISD 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 and that the undersigned has full legal authority to execute this Agreement on behalf of SWISD and to bind SWISD to all terms, performances and provisions herein contained.

V. FUNDING AND ASSISTANCE BY CITY

5.1 In consideration of SWISD's performance of all services and activities set forth in this Agreement, CITY agrees to pay SWISD for all Eligible Expenses 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 \$25,000.00.

5.2 In order to partially offset SWISD's expenses associated with the Project, the City shall provide advanced payment during the term of this Agreement for the transportation expenses in support of the swimming lessons conducted at the Palo Alto Natatorium.

5.3 Distribution of funds will be based upon a request submitted by SWISD and shall provide City with the following supporting information:

- a) List of schools from which students were transported

- b) Number and age of students transported per school
- c) Dates of trips to and from Palo Alto Natatorium per school
- d) Total transportation costs per school participating in this program to include but not limited to: mileage costs and personal wages
- e) Total swim lesson cost per student

5.4 In the event there are funds not disbursed such unused funds will remain with CITY.

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

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY SWISD

6.1 SWISD agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. SWISD 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 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
- c) That SWISD's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.2 SWISD 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.

6.3 SWISD 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) within 45 days after the project completion.

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

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

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

6.6 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section V as a result of any auditing or monitoring by CITY, SWISD 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. ELIGIBLE EXPENSES

7.1 Eligible expenses by SWISD 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.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 SWISD 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 SWISD shall provide CITY immediate written notice of any adverse material change in the financial condition of SWISD that may materially and adversely affect its obligations hereunder.
- c) No litigation or proceedings are presently pending or to SWISD's knowledge, threatened against SWISD.
- d) None of the provisions contained herein contravene or in any way conflict with the authority under which SWISD is doing business or with the provisions of any existing indenture or agreement of SWISD.

IX. ACCESSIBILITY OF RECORDS

9.1 At any time during normal business hours and as often as CITY may deem necessary, upon three (3) days written notice, SWISD 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.

9.2 SWISD 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

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

XI. INSURANCE

Intentionally deleted

XII. INDEMNIFICATION

Intentionally deleted

XIII. NON-DISCRIMINATION

13.1 As a party to this contract, SWISD 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.

XIV. POLITICAL ACTIVITY

14.1 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.

XV. CONTRACTING

15.1 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 SWISD. SWISD is responsible to ensure that all permits required for the activities under this Agreement are obtained.

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

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 only be by amendment in writing executed by both CITY and SWISD under authority granted by formal action of the Parties' respective governing bodies.

16.2 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVII. ASSIGNMENTS

17.1 SWISD 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.

XVIII. SEVERABILITY OF PROVISIONS

18.1 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.

XIX. DEFAULT

19.1 Upon default by SWISD in the performance of its obligations hereunder, CITY shall give SWISD notice of the same and SWISD shall have 30 days following receipt of written notice of default from CITY (or such reasonably longer time as may be necessary provided SWISD commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If SWISD 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.

19.2 Upon default by CITY in the performance of its obligations hereunder SWISD shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from SWISD (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, SWISD may pursue all remedies available in law or equity and/or other rights SWISD may have in this Agreement, subject to the limitations set forth in Section 22.01.

XX. NON-WAIVER OF PERFORMANCE

20.1 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.

20.2 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.

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

XXI. ENTIRE AGREEMENT

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

XXII. NOTICES

22.1 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 of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283

Southwest Independent School District
Attn: Superintendent
11914 Dragon Lane
San Antonio, TX 78252

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.

XXIII. PARTIES BOUND

23.1 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.

XXIV. RELATIONSHIP OF PARTIES

24.1 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.

XXV. TEXAS LAW TO APPLY

25.1 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.

XXVI. GENDER

26.1 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.

XXVII. CAPTIONS

27.1 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 IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the _____ day of _____, 2018.

**CITY OF SAN ANTONIO
PARKS AND RECREATION**

**SOUTHWEST INDEPENDENT
SCHOOL DISTRICT**

By: _____
Xavier D. Urrutia, Director

By: _____
Dr. Lloyd Verstuyft, Superintendent

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY