

ORDINANCE 2019-06-20-0561

APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE NATURAL RESOURCES DEFENSE COUNCIL, INC., AND THE CITY OF SAN ANTONIO IN SUPPORT OF THE AMERICAN CITIES CLIMATE CHALLENGE

* * * * *

WHEREAS, the City of San Antonio has committed to addressing the effects of global warming through Resolution 2017-06-22-0031R, by adopting and supporting the goals of the Paris Agreement; on January 11, 2019, the City was one of 25 cities chosen to participate in the Bloomberg Philanthropies' American Cities Climate Challenge (ACCC) and to receive technical assistance and support packages over a two-year period valued at up to \$2.5 million to work on buildings and transportation-related initiatives aimed at reducing greenhouse gas emissions; and

WHEREAS, to develop a Memorandum of Understanding (MOU) for the ACCC support, the Office of Sustainability coordinated with the Natural Resources Defense Council, Inc. (NRDC), which was selected by Bloomberg Philanthropies to serve as the core partner supporting cities on overall project strategy, outreach and education, stakeholder engagement, advocacy, and coordination of best-in-class technical assistance from a variety of national organizations with expertise in buildings and transportation; and

WHEREAS, the ACCC cities do not receive direct financial support as a participant, but San Antonio will be assigned two City Advisor Contract Employees, who will be housed within the Office of Sustainability, to facilitate the development and implementation of high-impact actions and the MOU establishes the terms and conditions for the working agreement; and

WHEREAS, the Office of Sustainability will provide temporary office space for the two City Advisor Contract Employees and access to shared office equipment needed to reasonable perform their duties; and

WHEREAS, this Ordinance approves the Memorandum of Understanding with the NRDC to provide support to meet the City's participation in the American Cities Climate Challenge through December 31, 2020; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

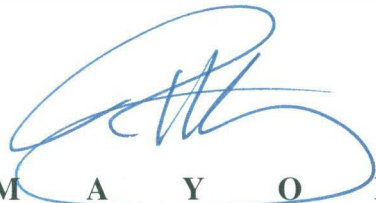
SECTION 1. The City Manager, or designee, or the Director, Office of Sustainability, or designee, is hereby authorized to take all actions necessary to negotiate and execute a Memorandum of Understanding (MOU) with the Natural Resources Defense Council, Inc. (NRDC), in support of the Bloomberg Philanthropies' American Cities Climate Challenge (ACCC) through December 31, 2020. The term shall start after the City executes the MOU. A copy of the MOU, in substantially final form, is attached and incorporated herein for all purposes as **Attachment I**. The execution authority granted by this ordinance shall expire 60 days from the effective date.

SECTION 2. There is no fiscal impact to the General Fund for this initiative. The Office of Sustainability will provide temporary office space for the two City Advisor Contract Employees and access to shared office equipment needed to reasonable perform their duties.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 20th day of June, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Andrew Segovia, City Attorney

Agenda Item:	36
Date:	06/20/2019
Time:	11:35:59 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a Memorandum of Understanding between the Natural Resources Defense Council and the City of San Antonio in support of the American Cities Climate Challenge. [Roderick J. Sanchez, Assistant City Manager; Douglas Melnick, Chief Sustainability Officer, Office of Sustainability]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Jada Andrews-Sullivan	District 2		x				
Rebecca Viagran	District 3		x				
Dr. Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x			x	
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10			x			

Attachment I

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND THE
CITY OF SAN ANTONIO**

I. PURPOSE

This Memorandum of Understanding ("MOU") establishes the terms and conditions for the working agreement ("Agreement") between the Natural Resources Defense Council, Inc. ("NRDC") and the City of San Antonio (the "City"), in support of the American Cities Climate Challenge ("ACCC" or "Challenge"). NRDC together with the City are also referred to as the "parties."

II. BACKGROUND

The ACCC is a national initiative to create healthier and more prosperous American cities by supporting a critical mass of the most populous cities in meeting or exceeding their city's equivalent of the U.S. emission reduction targets under the Paris Climate Agreement. By participating in the ACCC, cities will support bold solutions that can be replicated by other municipalities nationwide and around the world to advance local economic prosperity and reduce pollution. Bloomberg Philanthropies has provided NRDC with funding for the Challenge.

On June 1, 2018, Bloomberg Philanthropies announced the ACCC and opened up a competitive application process to the 100 most populous cities in the United States to participate in the Challenge. The first round of applications opened on June 19, 2018 and closed July 18, 2018. Fifty-one cities responded to the open call and submitted applications to the Challenge. In August of 2018, thirty-seven cities were chosen through a competitive process to participate in site visits by Challenge staff, so that Challenge staff could learn more about each city's impact goals. Those selected cities submitted detailed work plans to Challenge staff outlining their own initiatives (the City's specific work plan is attached hereto as Exhibit B).

In October of 2018, twenty-five city initiatives were selected as finalists by Challenge staff to participate in the Challenge and receive support. The strategies outlined in the work plan and this MOU are consistent with and support the implementation of the SA Tomorrow Sustainability Plan adopted by San Antonio City Council on August 11, 2016.

NRDC is a 501(c)(3) public charity established in 1970 with the mission to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has the experience and ability to support a participating City's execution of buildings and transportation initiatives, which will enhance the City's ability to achieve the long-term success of those initiatives and benefit other communities seeking to implement similar initiatives.

III. AGREEMENT TO PARTICIPATE

The City agrees to participate to the best of its ability in the ACCC and pursue the successful execution of the initiatives, measures and other actions and goals in the work plan submitted to the Challenge and the City Strategy Overview prepared from the work plan and defined in Section V, both of which are attached to this Agreement.

In the event of any conflict between the work plan and City Strategy Overview, the terms of the latter shall prevail. In the event of any conflict or inconsistency between the terms and conditions of this MOU and any terms or conditions set forth in any other documents, including the original application, the terms and conditions set forth in this MOU shall prevail. NRDC will support the City in the achievement of all such initiatives, measures and other actions and goals to which it has committed, for the duration of the City's participation in the ACCC, as more specifically set forth in this MOU.

IV. COMMITMENTS BY NRDC

For the duration of the City's participation in the ACCC, and at no expense to the City, NRDC will use commercially reasonable efforts to provide support, resources and opportunities to assist the City in achieving goals contained in the City Strategy Overview and described in the Support Package, as defined below under Section V, including but not limited to the following:

1. Designate two NRDC employees (the "Climate Advisors") to report to the ACCC City Lead (as defined in Section V), who shall be available for input and general direction on work schedule, tasks and assignments for the purpose of advancing the City Strategy Overview. The Climate Advisors are employees of NRDC, a City contractor, and NRDC alone. The Climate Advisors shall not be considered employees of the City at any time during the duration of the City's participation in the ACCC, and the City shall not be responsible for the Climate Advisors' compensation, benefits or expenses;
2. Share best practices and expertise on all aspects of initiative design and implementation including regular access to staff at NRDC and Third Parties, defined below, as appropriate;
3. Provide additional discretionary resources to support local organization involvement in ACCC, stakeholder engagement, compliance with programs, and enhanced technical, analytical, and communications capabilities of the City, where applicable and as determined by NRDC in its sole discretion;
4. Identify and assist the City in securing additional resources to achieve the goals in its City Strategy Overview and its resource commitment requirements, where applicable and as determined by NRDC in its sole discretion;
5. Assist the City in peer-to-peer networking with other cities, including hosting in-person forums involving other cities and partners participating in the ACCC at the sole expense of NRDC;
6. Designate an NRDC employee outside of the Climate Advisors (the "NRDC City Strategist"), to direct NRDC's work with the City on the Challenge and serve as the City's primary NRDC contact; and
7. Designate an NRDC employee outside of the Climate Advisors and NRDC City Strategist (the "NRDC Director of Strategy and City Engagement"), to manage the NRDC City Strategist.

With prior express written approval from the City, NRDC reserves the right to direct its affiliate NRDC Action Fund Inc. to provide support, resources and opportunities outlined in this Section IV.

With prior express written approval from the City, NRDC reserves the right to direct independent contractors retained by NRDC or an affiliate to provide support, resources and opportunities outlined in this Section IV.

“Third Parties,” referenced in this Section IV, Section V, Section XIV and Exhibit A hereto, are parties associated with the ACCC who are not affiliated with or under contract with NRDC. Third Parties provide support, resources and opportunities to Cities outside of those listed in this Section IV. NRDC is not responsible for Third Parties’ ultimate delivery of support, resources and opportunities to Cities, and Third Parties’ failure to provide resources outlined in the Support Package (further described below in Section V) shall not be a basis to terminate this MOU under the provisions of Section XV.3.

V. COMMITMENTS BY THE CITY

Consistent with and in support of the SA Tomorrow Sustainability Plan adopted by the San Antonio City Council on August 11, 2016, the City commits to pursue to the best of its ability, implementation of initiatives to reduce net emissions by December 31, 2020. Such pursuit must comply with applicable laws, ordinances, rules and policies and maintain collaboration among the City and its major stakeholders, and such initiatives shall include the following:

1. Meet municipal electricity demand with renewable energy;
2. Benchmarking, audit, and retro-commissioning (RCx) policies for existing buildings;
3. EV and solar readiness or installation requirement;
4. New financing programs for energy efficiency, renewables, and infrastructure;
5. Improve public transit speed, reliability and user experience;
6. Ubiquitous electric vehicle (EV) charging infrastructure;
7. Commuter incentives;
8. Define and expand the high-frequency public transit network to achieve significant ridership increases; and
9. Subject to prior express written approval from NRDC, Deep Energy Retrofits and Zero Net Energy Policy (ZNE) for municipal buildings.

In support of the City’s pursuit of such implementation of these initiatives, the City further commits to the best of its ability to undertake the following actions:

1. Develop a multi-year plan (the “City Strategy Overview”), the initial version of which is attached hereto as Exhibit C. The City Strategy Overview describes the City’s goals and the initiatives and key actions that the City intends to undertake in order to achieve these goals. The City Strategy Overview is jointly developed by the City, NRDC and Third Parties, and shall be updated every six months by the City and NRDC to reflect any necessary changes. The City Strategy Overview shall include the following items:
 - a. Emissions reductions targets for the City’s initiatives;
 - b. Descriptions of the key elements of each initiative and the actions undertaken to achieve those initiatives;
 - c. Year 2020 goals of key actions and key indicators that will be used to measure progress toward those goals;
 - d. City-based and non-City based resources and support needed by the City to achieve each action;
 - e. Estimated amount of time that key staff employed by the City can commit to the design, adoption and implementation of the actions; and
 - f. A designated City employee (the “City ACCC Lead”), who shall oversee the City’s execution of its City Strategy Overview.

- g. The City ACCC Lead shall be the City's Chief Sustainability Officer until such time as he or she becomes unavailable or ceases to report to the City Mayor. In either case, the City shall designate as soon as reasonably practicable another City employee who reports to the City Mayor as the City ACCC Lead. The role of such City employee must be reasonably satisfactory to NRDC in the event that such City employee is not the City's Chief Sustainability Officer.
2. Develop a support package along with NRDC and Third Parties, outlining resources that will be provided by NRDC and Third Parties (the "Support Package", attached hereto as Exhibit D). NRDC reserves the right to unilaterally modify the Support Package provided that no resources made available to the City are decreased as compared to those listed on the Support Package as of the date this MOU was first executed.
3. Develop and share with NRDC and Third Parties a delivery plan regarding the detailed activities and deliverables pertaining to milestones that will occur during the duration of the City's involvement with the ACCC (the "Delivery Plan"). The Delivery Plan shall be subject to periodic review by the City, NRDC and Third Parties, with the intention that feedback be provided for further development of the Delivery Plan. The Delivery Plan shall be updated by the City, NRDC and Third Parties at least once every three months, in so far as practicable, to reflect any changes.
4. Provide NRDC and Third Parties with information as permitted by City laws, ordinances, rules, and policies to enable them to successfully assist the City as set forth in this MOU, including information related to emission metrics.
5. Participate in the ACCC network of peer cities to share best practices with NRDC and other cities participating in the ACCC, including work products and materials, programmatic concepts and successful processes.
6. Make the City ACCC Lead available to meet with designees of NRDC at least once every three months, in so far as practicable, at a reasonable time and mutually agreed upon place, throughout the duration of the City's involvement with the ACCC.
7. Provide the Climate Advisors with City resources, including the following:
 - a. A climate-controlled work space, including use of a desk, chair, and file cabinet, with the exact location to be determined by the City. The work space shall only be used for general office purposes and accessed during normal business hours, unless the Climate Advisors receive express permission to access the work space outside normal business hours;
 - b. Internet access;
 - c. Access to and use of a printer, copier, scanner and fax machine, including any required network connectivity;
 - d. Cleaning, recycling and maintenance of the work space; and
 - e. Access to City information and materials necessary for the Climate Advisors to reasonably perform their duties, so long as it is permitted by City laws, ordinances, rules, and policies.
8. Make reasonable use of the City Mayor's time, participating in no less than three meetings per year with senior officials of the Challenge team to discuss the City's progress on the initiatives described in its City Strategy Overview.
9. Use reasonable best efforts to prioritize staffing in operations departments, such as the City Attorney's Office, to support the work of the ACCC.

10. Use reasonable best efforts to take all necessary and appropriate actions to complete the work stated in City Strategy Overview in accordance with the timeline and other provisions set forth therein.
11. Use reasonable best efforts to coordinate with NRDC and its partners and other funders, whether or not they are parties to this Agreement.
12. Use reasonable best efforts to provide information that will facilitate coordination between NRDC, Third Parties and other entities also involved in the Challenge, including cooperating with and supporting NRDC's compliance with all requirements of funding provided to NRDC for use on ACCC expenses by adhering to the requirements set forth in Exhibit A hereto (the "Funding Requirements").
13. Make the City ACCC Lead and other relevant City staff available for conference calls to discuss the status of the ACCC work with representatives of NRDC and Third Parties, at a time mutually agreed upon by the parties acting reasonably, and occurring on a quarterly basis.

VI. SELECTION AND MANAGEMENT OF THE CLIMATE ADVISOR

NRDC shall determine and lead the hiring and retention process for the Climate Advisors, including the development of a position description and the advertisement of the position. NRDC will coordinate the hiring process with the City and solicit feedback on the selection of potential candidates for the Climate Advisors, but NRDC shall have exclusive hiring authority, provided that NRDC shall not hire any individual objected to in writing by the City. NRDC shall conduct periodic reviews, but not less than one review annually, to evaluate the work-related performance of the Climate Advisors. NRDC shall coordinate such reviews with the City and solicit feedback from the City ACCC Lead. The City ACCC Lead shall report any work-related issues with the Climate Advisors to the manager of the ACCC program at NRDC. NRDC reserves the right to terminate one or both of the Climate Advisors for any reason or no reason. In the event of termination of a Climate Advisor, the City and NRDC shall meet and confer in good faith to discuss reinstatement of the Climate Advisor to City Hall or provision of a replacement Climate Advisor in so far as practicable.

VII. PARTICIPATION IN NRDC ACTIVITIES

NRDC may require or invite the Climate Advisors to participate in NRDC's employee events and meetings or attend conferences or other offsite meetings or events. NRDC shall bear the employee-related expenses for any such travel, meetings and events (provided that such expenses are in accordance with NRDC's expense reimbursement policies, as they exist from time to time). NRDC shall coordinate with the City in all such cases requiring or inviting participation, which may include the following:

1. Weekly or bi-weekly NRDC staff meetings;
2. Quarterly in-person meetings; and
3. Conferences, meetings and other events designed to further the Climate Advisor's professional development and/or where the Climate Advisor's participation is designed to further NRDC's mission.

VIII. NOT AN EMPLOYEE OF THE CITY

The Climate Advisors shall not in any way be considered an employee of the City. NRDC and the City affirm that NRDC, and not the City, shall be responsible for any and all compensation

and benefits to be provided to the Climate Advisors and that the Climate Advisors shall not be entitled to receive:

- a) Any form of compensation, including but not limited to wages, salary, bonuses or any other form of remuneration from the City;
- b) Any retirement or health care benefits available to City employees, including but not limited to participation in any state, local or municipal pension or retirement or health care plans; or
- c) Any fringe benefits, reimbursement of expenses, or any other employment benefits available to City employees.

The City affirms the work to be performed by the Climate Advisors is not bargaining unit work, and that the City shall not request that the Climate Advisors perform any work that reasonably could be considered to be bargaining unit work or violate the terms of a collective bargaining agreement.

The City affirms:

- a) Climate Advisors shall not be participants in any career or civil service systems and shall not be protected by any career or civil service laws, ordinances, rules or regulations; and
- b) Climate Advisors shall not have or acquire any rights under any such systems, laws, ordinances, rules or regulations, including, but not limited to, the right to notice or a hearing.

The City affirms:

- a) The work to be performed by the Climate Advisors shall not be considered to be lobbying, and shall not be subject to or limited by any state, local or municipal laws, ordinances, codes, rules or regulations that prohibit or regulate the ability of City officials or employees to engage in activities related to lobbying; and
- b) The City shall not request that the Climate Advisors perform any work that violates or causes either of the Climate Advisors or NRDC to become subject to any such laws, ordinances, codes, rules or regulations.

The City further affirms the Climate Advisors shall not be deemed to be City officials or employees for purposes of any state, local or municipal ethics laws, ordinances, codes, rules or regulations that apply to City officials and employees, including, but not limited to, such laws, ordinances, rules, or regulations that impose ethics disclosure or reporting requirements, restrict use of municipal equipment or property or prevent or regulate secondary employment. NRDC shall provide the Climate Advisors with a telephone, a computer and other necessary equipment. The City shall provide the Climate Advisors with City resources, including Internet access and access to and use of a printer, copier, scanner and fax machine, including any required network connectivity (as contemplated by Section V). Subject to the terms and conditions in Section XVII of this MOU and any applicable public records requirements, the Climate Advisors may use resources provided by NRDC or the City for work related to performance of the Climate Advisors' duties under the MOU or work related to the Climate Advisor's employment with NRDC, but the Climate Advisors shall not be permitted to use such resources for unrelated purposes.

IX. COMPLIANCE WITH RULES

The Climate Advisors shall comply with policies, rules, regulations and procedures of the City relating to the use of equipment, office space and common areas at the City, provided that NRDC and the Climate Advisors shall have been provided in advance with written copies of such policies, rules, regulations and procedures. The Climate Advisors shall maintain the work space in a clean, orderly and neat fashion and shall not create or contribute to the creation of a nuisance and shall not engage in or permit any action that will disturb the quiet enjoyment of any occupants of the building. NRDC may remove the Climate Advisors from assignment at the City upon reasonable request of the City, should the Climate Advisors materially fail to obey the City's policies, rules, regulations and procedures or when, in reasonable judgment of the City, such removal serves the best interests of the City. In the event a Climate Advisor is removed pursuant to this Section IX, the City and NRDC shall meet and confer in good faith to discuss reinstatement of the Climate Advisor to City Hall or provision of a replacement Climate Advisor in so far as practicable.

The City ACCC Lead and NRDC City Strategist shall meet and confer prior to assignment of the Climate Advisors in order to ensure the Climate Advisors are able to comply with NRDC's document retention policies. A copy of NRDC's document retention policies shall be provided to the City.

The City represents and warrants that it is permitted under all applicable laws, ordinances, rules, and policies, including those concerning government ethics, to participate in the ACCC under the terms and conditions of this MOU and to accept resources from NRDC for these purposes. The City also represents and warrants that it has obtained all approvals from State and/or City attorneys, ethics bodies, and other authorities necessary to participate in the ACCC under the terms and conditions of this MOU and to accept resources from NRDC for these purposes.

X. TERM

This MOU shall be for a term commencing on the first date on which both of the parties shall have affixed their signatures to this MOU and shall expire on December 31, 2020, unless earlier terminated in accordance with the provisions herein.

XI. STATUS MEETINGS

As set out in Section V above the parties agree to meet to exchange information related to the status of the ACCC. The City will provide information related to the implementation of the ACCC in their specific jurisdiction. NRDC will provide information to the City related to the implementation of the ACCC in other jurisdictions, including supplying any additional information requested by the City.

XII. AFFILIATION WITH THE ACCC

NRDC supports the integration into the City's long-term vision for sustainability of all initiatives undertaken by the City with support from the ACCC, including any applicable sustainability or climate action plans. NRDC may use the City's name and describe the activities the City undertakes in conjunction with the ACCC, including in web and print materials produced for public consumption, subject to the terms and conditions in Section XVII of this MOU and the

City being given reasonable opportunity to review and suggest changes. Furthermore, NRDC may promote the involvement of the City in the ACCC through case studies, reports, and other media, subject to the conditions in Sections XIII and XVII of this MOU and the City being given reasonable opportunity to review and suggest changes. If the City notifies NRDC in writing of suggested changes during the contemplated review period, NRDC shall consider such changes in good faith and not unreasonably reject such changes.

XIII. OTHER PUBLIC COMMUNICATIONS

The City agrees to include a quote from the City's Mayor in the announcement of the launch of the ACCC, mutually agreed upon in advance by the City and NRDC. The City and NRDC agree to not promote the City's participation in ACCC publicly until after the formal launch announcement. The City will be available on reasonable notice to work with NRDC on future communication needs from high-level City officials during the duration of the ACCC.

The City agrees to coordinate with NRDC on formal public communications that reference the ACCC. This formal public communication is coordinated by the City ACCC Lead and mutually approved in advance by the City and NRDC. Independent communications from other City officials, other than the City ACCC Lead do not require NRDC approval.

Any joint communications or materials will require the prior written approval of both the City and NRDC. Independent, planned communications from other City officials, other than the City ACCC Lead, do not require NRDC approval, provided that the City promptly notifies, to the best of its ability, a contact designated by NRDC, in writing, of such ACCC-related communications from those other City officials.

XIV. MODIFICATION OF THE CITY STRATEGY OVERVIEW

Any one of the parties to this MOU may propose modifications to the City Strategy Overview based upon internal or external circumstances that affect the City's ability to achieve the milestones and goals outlined in the plan or NRDC's ability to provide the support set forth in the Support Package. All substantive modifications, including modifications to the programs the City pursues or modifications to the ACCC timeline must be agreed upon by those who bear primary responsibility for the day-to-day management and execution of the ACCC and who are accountable for the overarching structure and strategy of the ACCC, including the City ACCC Lead and the NRDC Director of Strategy and City Engagement. The NRDC Director of Strategy and City Engagement shall not unreasonably withhold approval. If the City ACCC Lead and the NRDC Director of Strategy and City Engagement cannot reach an agreement about the terms of any such proposed modification, NRDC shall have the right to terminate this MOU in accordance with Section XV. If NRDC does not exercise its right to terminate, it shall agree to modify the City Strategy Overview by removing or altering the City obligation in question as directed by the City ACCC Lead, provided that in this instance NRDC shall also have the unilateral right to modify Exhibit D to ensure that the level of services being provided to the City is commensurate with the newly modified City Strategy Overview.

The City will provide notice to NRDC if a Third Party fails to deliver the services described in the Support Package and such failure is reasonably expected to cause the City to breach this Agreement. Upon receipt of such notice NRDC shall either (i) compel such Third Party to comply with its obligations under the Support Package, or (ii) replace the Third Party. If NRDC

is unable to compel compliance or replace such Third Party, then the City and NRDC will amend this Agreement to remove or alter any City obligations made impossible to perform due to such Third Party's breach.

XV. TERMINATION OF MOU

This MOU may be terminated by the parties according to the following conditions:

1. Failure by the City to Update a City Strategy Overview: NRDC may terminate this MOU if the City fails to update the City Strategy Overview with any changes every six months, in so far as practicable, after the date hereof, assuming no reasonable communications have been made with the City that explain the delay in submission.
2. Failure by the City to Achieve Milestones: NRDC may terminate this MOU if, more than one year after the execution of this MOU, it determines that the City is substantially unable to achieve the milestones and goals outlined in its City Strategy Overview, or that the City has demonstrated an inability to dedicate the required resources to the achievement of the milestones and goals in its City Strategy Overview. Prior to terminating this MOU as provided in this Section XV.2, NRDC may initiate a process under Section XIV to propose modifications to the City Strategy Overview and clearly communicate these proposed modifications to the City in writing.
3. For Cause: Either the City or NRDC may terminate this MOU if the other party is in material breach of its obligations under this MOU, and such breach has not been corrected to the non-breaching party's reasonable satisfaction in a timely manner after written notice of such breach has been provided to the breaching party.
4. Notice: Unless otherwise specified herein, written notice of termination pursuant to this Section XV shall be given by the party terminating this MOU to the other not less than 30 calendar days prior to the effective date of termination.

XVI. RELATIONSHIP

This MOU shall not be construed as a joint venture or so as to make any one of the parties an agent of any of the other parties. Each of the parties hereto expressly disclaims any intention to enter into any such agency or joint venture and agrees to conduct itself so as not to act or purport to act on behalf of the other. This MOU does not authorize any party to act as the agent or legal representative of any other party for any purpose whatsoever and no party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other party, or to bind any other party in any manner or thing whatsoever.

To aid in the advancement of the City Strategy Overview, the Climate Advisors will be advising the City regarding governmental decisions. As such, the Climate Advisors may present themselves as working for NRDC to further the goals of the City Strategy Overview in spoken and written communications. Any individual that inquires about the Climate Advisor's status of employment or role within the City will be provided with information that confirms the Climate Advisors are employees of NRDC, and are advising the City pursuant to this Agreement.

XVII. CONFIDENTIALITY OF INFORMATION AND PROTECTION OF INTELLECTUAL PROPERTY

Each party recognizes that it may have access to information of a proprietary, private or confidential nature owned by another party (a "Disclosing Party"). Each party acknowledges that any proprietary, private and confidential information it shares with any other party under

this MOU must be identified as such at the time of communication. As such, each party that receives or has access to information that has been so identified (a “Receiving Party”) agrees to keep such information in strictest confidence and protect it from disclosure; provided that the parties may disclose such information as required by any applicable ordinances, regulations and laws that govern the Receiving Party. The provisions of this Section XVII shall not apply to:

- a) Information that is publicly known or publicly available, other than as a result of breach of this Section XVII;
- b) Information obtained by a Receiving Party from a source other than a Disclosing Party, which the Receiving Party knows is not under an obligation of confidentiality to the Disclosing Party;
- c) Information that is independently developed by a Receiving Party without access to a Disclosing Party’s confidential information;
- d) Information already in the possession of Receiving Party, provided that such information is not known by Receiving Party to be subject to any legal or contractual obligation of confidentiality owed to Disclosing Party; and
- e) Information that cannot be treated as proprietary, private, or confidential pursuant to applicable law.

Each party hereby waives any and all right, title and interest in and to such information of the other and agrees to return all physical copies, and destroy all electronic copies, of such information, except as otherwise agreed, at the expense of the party returning or destroying the information, upon request at the expiration or termination of this MOU. NRDC retains the right to aggregate otherwise confidential information for use in publications or other materials intended for public consumption, providing that individual confidentiality is maintained.

All rights and intellectual property rights (including copyrights), in any work, including, without limitation, all plans, research results, publications, developments, reports, processes, programs, analyses, website content, and other materials created or developed by or on behalf of the City and/or by the Climate Advisors (“Works”) will be licensed to NRDC on a royalty-free basis to facilitate best practice sharing among participating cities in the Challenge and other interested cities.

XVIII. DISPUTE RESOLUTION

Any dispute or misunderstanding arising under this MOU shall first be addressed through written communications and negotiations between the parties if practicable. If the parties are unable to reach a resolution within a reasonable period of time, the parties shall schedule mediation with a mutually agreed upon mediator. Should mediation fail to render a resolution, any and all additional legal and equitable remedies available at law may be sought by either party.

XIX. LIMITATION OF LIABILITY

No party shall be liable to any other party for any incidental, indirect, special or consequential damages of any kind arising out of this MOU or the relationship between the City and NRDC. The provisions of this Section XIX will survive the expiration or earlier termination of this MOU.

XX. NOTICES

All notices and other communications pursuant to this MOU must be in writing, addressed to the

parties at the applicable address set forth on the signature page hereof (or such other address as a party may from time to time specifically designate in writing), must be sent by a nationally recognized overnight courier and will be deemed given on the date delivery is first accepted or refused, provided that time sensitive communications may be sent by email to the applicable email address(es) set forth on the signature page hereof (or such other address(es) as a party may from time to time specifically designate in writing), but such time sensitive communications will not be deemed given unless and until receipt is confirmed (and each party agrees to confirm as promptly as reasonably practicable if such confirmation is requested), and informal communications may be sent by regular mail or email.

XXI. MISCELLANEOUS PROVISIONS

Neither this MOU, nor any rights or obligations hereunder, may be assigned, delegated, transferred or sublicensed by any party, by operation of law or otherwise, without the express prior written approval of the other parties. This MOU cannot be modified orally, and none of the terms hereof will be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. This MOU contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

[Signature page follows]

IN WITNESS WHEREOF, the parties to this MOU have affixed their signatures:

Ron Nirenberg
Mayor, City of San Antonio

Date: _____

Douglas Melnick
Chief Sustainability Officer/City ACCC Lead
Office of Sustainability
1400 South Flores Street
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Date: _____

Cai Steger
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40 West 20th Street
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cangelides@nrdc.org; jmukhopadhyay@nrdc.org

Date: _____