

STATE OF TEXAS

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**INTERLOCAL AGREEMENT**

COUNTY OF BEXAR

THIS INTERLOCAL AGREEMENT (the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”), by and between the CITY OF SAN ANTONIO, TEXAS (hereinafter referred to as “CITY”), a Texas Municipal Corporation, acting by and through its \_\_\_\_\_ and the CITY OF SAN ANTONIO EARLY CHILDHOOD EDUCATION MUNICIPAL DEVELOPMENT CORPORATION (“CORPORATION”), a Texas Municipal Development Corporation created by the City of San Antonio, acting by and through it’s \_\_\_\_\_, Board of Directors (collectively referred to hereinafter as “the Parties”). This Agreement is made and entered into by the Parties pursuant to the authority provided under the Interlocal Cooperation Act, Texas Government Code Chapter 791.

**RECITALS**

**WHEREAS**, Chapter 791 of the Texas Government Code (the “Interlocal Cooperation Act”) provides that a local government may contract or agree with another local government to perform governmental functions and services in accordance with this chapter; and

**WHEREAS**, the Interlocal Cooperation Act defines local government as a county, municipality, special district, junior college district, or other political subdivision of this state or another state; and

**WHEREAS**, the City of San Antonio is a municipal corporation and the City of San Antonio Early Childhood Education Municipal Development Corporation is a political subdivision of the State making each eligible to contract under the Interlocal Cooperation Act; and

**WHEREAS**, the Interlocal Cooperation Act allows eligible entities to contract with each other for the performance of “governmental functions in which the contracting parties are mutually interested”; and

**WHEREAS**, in 2012 the City Council of the City of San Antonio (the “City Council”) authorized the creation of the San Antonio Early Childhood Education Municipal Corporation for the purposes of developing early childhood literacy and educational programs pursuant to Chapter 379A, Texas Local Government Code, titled the "Better Jobs Act" (the “Act”); and

**WHEREAS**, the Act also authorizes a municipal development corporation to develop and implement programs for 1) job training, including long-term job training and in-training support service grants; and 2) the provision of funding to accredited post-secondary educational institutions, including public and private junior colleges, public and private institutions of higher education, and public and private technical institutions, to be used to award scholarships; and

**WHEREAS**, on November 3, 2020, a majority of the City’s voters authorized the levy of a 1/8 cent sales and use tax increase not to extend beyond December 31, 2025, for the benefit of the Corporation for the purpose of financing job training and scholarship programs (the “San Antonio Ready to Work Initiative”) through the Corporation commencing upon the full collection of the sales and use tax previously authorized by the voters for the Edwards Aquifer Protection Venue Project and the Parks Development and Expansion Venue Project; and

**WHEREAS**, the San Antonio Ready to Work Initiative will be controlled by the Proposition B approved by the voters, to wit: Ready to Work SA Workforce Program for Job Training and Scholarships (“Program”), for the purpose of financing authorized programs related to job training and the awarding of scholarships of the San Antonio Early Childhood Education Municipal Development Corporation; 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:

#### **ARTICLE I. PURPOSE**

The purpose of this Agreement is to set forth the objectives, understandings, and agreements of the Parties in connection with the establishment, implementation and operation of the job training and awarding of scholarships under the Program.

#### **I. RESPONSIBILITIES OF CORPORATION**

1.1 The Corporation shall:

- 1.1.1 Pay all funds authorized by the San Antonio Ready to Work Initiative sales tax of 1/8 cent to the City for implementation of the Program in full compliance of the requirements pursuant to Chapter 379A of the Texas Local Government Code and Proposition B approved by the voters.
- 1.1.2 Annually approve the budget for the Program as developed and presented by City in accordance with Chapter 379A of the Texas Local Government Code.
- 1.1.3 Maintain the corporate status of the Municipal Development Corporation as a valid Texas Municipal Development Corporation subject to Chapter 379A of the Texas Local Government Code, and, as applicable, the Texas Non-Profit Corporation Act, and all other applicable laws to which the Corporation is subject.

#### **II. RESPONSIBILITIES OF CITY**

2.1 The City shall:

- 2.1.1 Prepare the annual budget for the Program, shall disburse and account for all funds as required by law, shall be responsible for professional and support personnel serving the Program.

- 2.1.2 Maintain all records applicable to the Program and relating to all individuals participating in the Program and provide periodic updates to the Corporation.
- 2.1.3. Utilize all funds paid by the Corporation to fund the Program. In no event shall such funds be used for funding any other service offered by the City.
- 2.1.4 Contract by written Agreement separate from this Agreement, with for-profit and non-profit entities solely for services in connection with the Program and for the performance of any of City's responsibilities under this Agreement.
- 2.1.5 Establish a process to identify eligible participants in the Program consistent with Chapter 379A of the Texas Local Government Code.

### **III. GENERAL PROVISIONS**

- 3.1 Term and Termination. This Agreement shall be effective through December 31, 2025 or until all sales tax funding collected in accordance with the voter approved sales tax initiative for workforce training and tuition reimbursement has been expended. The Parties may, if consistent with state law, the contract with the voters and following non-binding arbitration, terminate this Agreement, in whole or part, for cause if it is determined that either Party has failed to perform in full compliance with the Agreement.
- 3.2 Partial Invalidity. If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is for any reason held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless a written amendment to this Agreement, is approved by the parties.
- 3.3 Integration and Complete Agreement. This Agreement, together with any instruments or documents expressly incorporated herein by reference, and any attachments hereto, contains the entire Agreement between the parties with respect to the subject matter hereof. No other Agreement, statement, or promise made by or to any officer, employee, official, or agent of any party that is not contained herein shall be of any force and effect. Any modifications to the terms of this Agreement must be in writing and approved and signed by the parties.
- 3.4 Construction of Agreement. Unless the context requires otherwise, words used in this Agreement shall be given their ordinary meaning. If a word is connected with and used with reference to a particular subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular subject matter or art. Words in the present or past tense include the future tense unless otherwise provided. The singular includes the plural and the plural includes the singular unless otherwise provided. Words of one gender include both genders unless otherwise provided. The headings at the beginning of the various provisions of this Agreement have been included only in

order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement unless otherwise provided.

- 3.5 **Applicable Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of Texas, without regard to any provisions relating to a choice of laws. This Agreement is performable in Bexar County, Texas. Unless otherwise required by law, exclusive venue for any dispute or proceeding concerning the interpretation and/or enforcement of this Agreement shall be in the state and federal courts of Bexar County, Texas.
- 3.6 In performing obligations specified in this Agreement, each Party shall act as an independent contractor of the other Party and shall have control of its own work and the manner in which it is to be performed. The Parties agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and of its agents or employees in conjunction with the performance of work covered under this Agreement. The Parties agree that each entity shall be responsible for any liability or damages of its personnel, if any. Nothing herein is intended to waive or limit sovereign immunity or other legal defense available under federal, state statutory or constitutional law.
- 3.7 This Agreement is intended for the benefit of the named Parties only, and is in no way intended to benefit any other person, either directly or indirectly, including individual members of the public. Nothing in this Agreement shall be construed to create a partnership or other type of joint enterprise.
- 3.8 **Indemnification.** The Parties acknowledge that they are governmental entities, and that neither party indemnifies the other party by entering into this Agreement. The Parties agree, however, to notify the other party if they are provided notice of a lawsuit or potential lawsuit related in any manner to this Interlocal Agreement between the Parties.
- 3.9 **Notice.** All notices required or permitted hereunder shall be in writing and shall be deemed delivered the earlier of (i) when actually received by personal delivery if received during normal business hours; or (ii) on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed; or (iii) on the date of receipt if mailed by certified mail, return receipt requested, addressed to the respective other Party at the address prescribed in Article IV, Section 4.8 of this Agreement, or at such other address as the receiving Party may have theretofore prescribed by written notice to the sending Party.

The initial addresses of the Parties are listed below. Each Party may designate a different address by giving the other Parties ten (10) days' prior notice.

If to the Corporation:

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San Antonio, TX

If to the City:

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San Antonio, TX

- 3.10 Amendments. This Agreement may be changed or amended only by a written instrument duly executed on behalf of each Party hereto.
- 3.11 Non-Waiver. Failure of any Party hereto to insist on the strict performance of any of the terms herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.
- 3.12 Assignment. No Party shall assign this Agreement at law or otherwise without the prior written consent of the other Parties, and no Party shall delegate any portion of its performance under this Agreement without the prior written consent of the other Parties.
- 3.13 Successors. This Agreement shall bind and benefit the Parties and their legal successors. This Agreement does not create any personal liability on the part of any trustee, officer, director, employee, elected or appointed official, or agent of a Party to this Agreement.
- 3.14 No Waiver of Immunity. No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance or non-performance of the covenants contained herein. CITY and CORPORATION acknowledge that the CITY and CORPORATION are both political subdivisions of the State of Texas and that the CITY and CORPORATION are both subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas 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 general laws of the State. Nothing in this Agreement waives any governmental immunity available to the CITY or CORPORATION under the laws of the State of Texas.
- 3.15 Legal Authority. Each person executing this Agreement represents and guarantees that he or she has legal authority to execute this Agreement on behalf of their respective Party and to bind said Party and their successors and assigns to all of the terms, conditions and obligations of this Agreement.
- 3.16 Venue and Governing Law. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue and jurisdiction for any claim or dispute arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.
- 3.17 Parties' Representations. The City and Corporation jointly negotiated this Agreement, which shall not be construed against or in favor of a Party simply because that Party primarily assumed responsibility for drafting.

3.18 Captions. All captions used in this Agreement are for the convenience of reference only and shall not be construed to have any effect or meaning as to the Agreement between the Parties.

This Agreement will be effective once fully executed by authorized representatives of the Parties and remain in effect for and until all funds authorized by the November 3<sup>rd</sup>, 2020, election have been collected and expended under the Program.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement to be effective on the date of the last signature below (“Effective Date”).

**CITY OF SAN ANTONIO EARLY CHILDHOOD EDUCATION MUNICIPAL DEVELOPMENT CORPORATION**

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**Date**

**CITY OF SAN ANTONIO:**

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**Date**