

AN ORDINANCE 2010-06-24-0625

**AUTHORIZING THE NEGOTIATION AND EXECUTION OF A ONE-YEAR AGREEMENT WITH FOUR ANNUAL RENEWAL OPTIONS BETWEEN URBAN CONNECTION-SAN ANTONIO AND THE CITY OF SAN ANTONIO FOR OCCUPANCY AND THE PROVISION OF YOUTH PROGRAMS SERVING 4TH THROUGH 8TH GRADERS AT THE FRANK GARRETT COMMUNITY CENTER; AUTHORIZING AN AGREEMENT TO REIMBURSE THE CHARITY BALL ASSOCIATION FOR FUNDS GRANTED TO MAKE CAPITAL IMPROVEMENTS IN THE EVENT OF NON-RENEWAL OR EARLY TERMINATION FOR CONVENIENCE.**

\* \* \* \* \*

**WHEREAS**, the Frank Garrett Community Center (Frank Garrett), a City-Owned Facility, operated by the Department of Community Initiatives (DCI), was designed to serve the San Antonio community; and

**WHEREAS**, the Frank Garrett provides community access to an array of social, health, and recreational services at one central location; and

**WHEREAS**, the Frank Garrett is co-located with the West End Park Senior Center which houses the Comprehensive Nutrition Program and includes a gymnasium, tennis courts, a softball diamond, and an open field for outdoor team sports; and

**WHEREAS**, Urban Connection-San Antonio (Urban Connection), a 501(c) 3 non-profit organization, provides services to the residents in the Lincoln Heights Courts, a San Antonio Housing Authority property; and

**WHEREAS**, through their partnership with the San Antonio Housing Authority, Urban Connection offers services aimed at helping residents to become self-sufficient and productive members of their community; and

**WHEREAS**, Urban Connection approached the City of San Antonio (City) in regards to a collaborative opportunity to co-locate with the City of San Antonio for the purpose of expanding services offered at the Frank Garrett for youth; and

**WHEREAS**, Urban Connection proposes providing programs designed to enrich the learning experience of participating youth from 4<sup>th</sup> through 8<sup>th</sup> graders at the Frank Garrett; and

**WHEREAS**, activities will include sports activities, drama, dance, art and photography, apprenticeships and other career development activities; and

**WHEREAS**, Urban Connection also proposes to offer nutritional meals, nutrition classes to the children and their parents, and opportunities to participate in wellness classes; and

**WHEREAS**, Urban Connection applied for a grant (\$127,900.00) through the Charity Ball Association for capital improvements at the Frank Garrett, specifically to the kitchen and gym; and

**WHEREAS**, the agreement with the City and Urban Connection is contingent upon the successful awarding of the Charity Ball Association grant to Urban Connection; and

**WHEREAS**, should the City fail to renew or terminate its agreement for convenience with Urban Connection before five years have transpired, the City agrees to reimburse the Charity Ball Association on a pro-rata basis (reimbursement depends on months remaining in a five-year period) the funds invested in the Frank Garrett by Urban Connection for capital improvements; and

**WHEREAS**, the City desires to approve the negotiation and execution of agreements associated with the foregoing collaboratives; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager, or her designee, or the Director of the Department of Community Initiatives (DCI), or her designee is authorized to negotiate and execute a one-year agreement with four annual renewal options with Urban Connection-San Antonio (Urban Connection) for occupancy and the provision of youth programs serving 4<sup>th</sup> through 8<sup>th</sup> graders at the Frank Garrett Community Center. The agreement shall provide details on occupancy and services to be provided by Urban Connection, including programs designed to enrich the learning experience of participating youth from 4<sup>th</sup> through 8<sup>th</sup> grade at the Frank Garrett. The agreement shall include the provision by Urban Connection of activities and services such as sports activities, drama, dance, art and photography, apprenticeships, career development activities, nutritional meals, nutrition classes to the children and their parents, and opportunities to participate in wellness classes. The agreement shall provide that if funding is not provided by Charity Ball Association to Urban Connection, then the City shall have the opportunity to terminate without further obligation. Additionally, the final agreement shall incorporate applicable standard provisions from the City's lease and delegate agency agreements, copies of which are attached hereto as **Attachments I** and **II**, respectively and shall first be reviewed and approved by the City Attorney's Office.

**SECTION 2.** The City Manager, or her designee, or the Director of the Department of Community Initiatives (DCI), or her designee is authorized to negotiate and execute an agreement to reimburse the Charity Ball Association for funds granted to make capital improvements in the event of non-renewal or early termination for convenience of the agreement with Urban Connection.

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SS/mgc  
06/24/10  
Item # 50

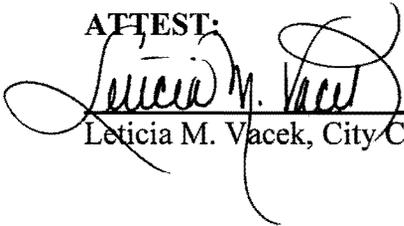
**SECTION 4.** This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 24<sup>th</sup> day of June, 2010.

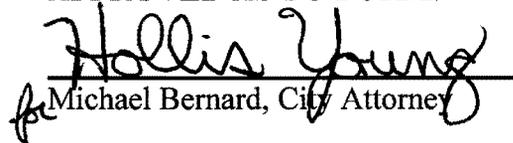


M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

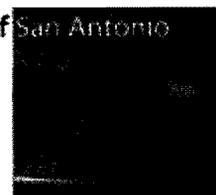
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 50

<b>Name:</b>	50						
<b>Date:</b>	06/24/2010						
<b>Time:</b>	05:37:01 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the negotiation and execution of a one-year agreement with four annual renewal options between Urban Connections and the City of San Antonio for occupancy and the provision of youth programs serving 4th through 8th graders at the Frank Garrett Community Center; authorizing an agreement to reimburse the Charity Ball Association for funds granted to make capital improvements in the event of non-renewal or early termination for convenience. [Peter Zaroni, Assistant City Manager; Cindy Schoenmakers, Interim Director, Community Initiatives]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4	x					
David Medina Jr.	District 5		x				x
Ray Lopez	District 6		x				
Justin Rodriguez	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

**Office Lease**  
(???)

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**1. Basic Information, Definitions.**

**Authorizing Ordinance:**

**Landlord:** City of San Antonio

**Landlord’s Address:** P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: ???? , ??????)

**Tenant:**

**Tenant's Address:**

**Guarantors:**

**Guarantors' Addresses:**

**Premises:**

**Permitted Use:**

**No. of Parking Spaces:**

**Commencement Date:**

**Initial Term:**

**Base Rent:**

**Address for Payment of  
Rent:**

**Security Deposit:**

**Tenant's Pro Rata Share:** %

**Building Operating  
Hours:** ??????????????

**Common Areas:**

All facilities and areas of the Building [include if applicable: and Parking Facilities] and related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building. Landlord has exclusive control over and right to manage the Common Areas.

**Essential Services:**

(a) HVAC to the Premises reasonable for the Permitted Use (exclusive of needs unique to specialized equipment) during Building Operating Hours; (b) hot and cold water for lavatories and drinking; (c) janitorial service and periodic window washing; (d) elevator service, if necessary, to provide access to and from the Premises; (e) electricity for normal office machines and the Building's standard lighting reasonable for the Permitted Use; and (f) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures on the Premises.

**Operating Expenses:**

All expenses that Landlord must reasonably pay in connection with ownership, operation, and maintenance of the building, except costs for (i) principal or interest on

any debt, (ii) capital expenditures classifiable as such for federal income tax purposes; (iii) repair, replacements, and general maintenance paid by proceeds of insurance or by Tenant or other third parties; (iv) depreciation; (v) leasing commissions; (vi) legal expenses; (vii) renovating or otherwise improving space in the Building; (viii) federal income taxes imposed on or measured by the income of Landlord from operation of the Building; and (ix) marketing expenses.

**Parking Rent:**

**2. Grant.**

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of the Lease, Landlord must reserve for Tenant the number of parking spaces indicated above.

2.02. Tenant's right of occupancy begins at the Commencement Date. Likewise, Tenant's first rent payment is due at the Commencement Date.

2.03. This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

**3. Rent.**

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

3.02. Base Rent for the first year of the Initial Term is ??????. Base Rent will be adjusted each year of the Initial Term according to changes in the Consumer Price Index—All Urban Consumers, CUUR0000SA0, Not Seasonally Adjusted, U.S. city average, All items, 1982-84=100. Adjustments are determined by multiplying the previous year's Base Rent by a fraction, the numerator being the index number for the last month before the adjustment takes effect and the denominator being the index number for the month before the month of the Commencement Date. If the product is greater than the previous year's Base Rent, Tenant will pay this greater amount as Base Rent until the next rental adjustment. Base Rent will never be less than the Initial Base Rent. If the Department of Labor ceases publishing the Consumer Price Index—All Urban Consumers, CUUR0000SA0, Not Seasonally

Adjusted, U.S. city average, All items, 1982-84=100, Landlord may specify an alternative index to be used.

3.03. Pending calculation of adjusted Base Rent for a new year, Tenant need pay only the Base Rent for the previous year. Landlord must notify Tenant of each adjustment to Base Rent no later than 60 days after the effective date of the adjustment and show the data and arithmetic used to calculate it. When the new Base Rent is determined, Tenant can choose whether to pay in a lump sum or in payments over the remainder of the adjustment period the difference between the newly adjusted Base Rent and what Tenant actually paid pending the calculation.

3.04. ?????????? No annual increase may be more than 4% or less than 3%. The unrecovered increase from a previous year does not accrue to succeeding years. ???????????

3.05. Tenant must pay Base Rent, Parking Rent and Additional Rent in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty. Due but unpaid amounts bear interest at the prime rate of interest (Prime Rate) in effect on the due date as published from time to time in The Wall Street Journal (or, if The Wall Street Journal ceases publication, another financial publication reasonably selected by Landlord) plus four percent per annum (Interest Rate) from the due date until paid in full. In addition, if Tenant is delinquent in paying an amount for more than 10 days after the date due, Tenant must pay to Landlord upon demand a late charge equal to five percent of the delinquent sum. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.06. In addition to Base Rent, Tenant must pay to Landlord the following additional rents:

3.06.01. Parking Rent. Each month during the Initial Term, Tenant must pay Parking Rent to Landlord's third-party parking manager.

3.06.02. Additional Rent. Tenant must pay Landlord a share (per each rentable square foot in the Premises) ("Additional Rent") of increases in annual Operating Expenses of the Building over expenses actually experienced in calendar year ending ???????????.

3.07. *Calculation of Operating Expense Share.* To calculate per square foot expenses for a year, calculate the total expense for the applicable year. Then multiply the total Operating Expenses times the fraction consisting of the Premises'

rentable square feet by the Building's total rentable square feet actually under lease for the applicable year.

3.08. *Estimate of Operating Expense.* During each calendar year or partial calendar year of the Term, Tenant must pay Landlord, in advance concurrently with each monthly installment of Base Rent, an amount equal to the estimated Additional Rent for such calendar year or part thereof divided by the number of months therein. The estimate must be calculated as stated in the preceding paragraph. From year to year, Landlord may re-estimate the Additional Rent to be due by Tenant, based on actual expenses being incurred during a year, and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, monthly installments of Additional Rent payable by Tenant will be appropriately adjusted in accordance with the estimations so that, by the end of the calendar year in question, Tenant will have paid all the Additional Rent estimated by Landlord. Any amounts paid based on such an estimate are subject to adjustment when actual Operating Expenses are available for a calendar year.

3.09. *Recapture of Unrecovered Operating Expenses.* By April 1 of each calendar year, or as soon thereafter as practicable, Landlord must furnish Tenant a statement of Operating Expense for the previous year, (Operating Expense Statement). If Tenant's estimated payments of Operating Expenses for the year covered by the Operating Expense exceed Tenant's proportionate share of such items, then Landlord shall promptly credit or reimburse Tenant for such excess. Likewise, if Tenant's estimated payments of Operating Expense for such year are less than Tenant's proportionate share of such items, then Tenant shall promptly pay Landlord such deficiency//????????????//then Tenant's Base Rent for the remainder of the year will be increased proportionately so that, after payment of December rent, all Operating Expenses unrecovered in the previous year are fully recovered.

3.10. *Audit of Operating Expense.* On three business-days' written notice, Tenant and its agents and representatives may inspect and copy Landlord's business records relating to calculation of Additional Rent. No representative hired by Tenant may be compensated by a percentage of savings realized by Tenant. Unless otherwise mutually agreed, the inspection will be conducted during normal working hours. Landlord must make the records available at a location in San Antonio, Texas where Tenant and its agents and representatives will have reasonable accommodations, including HVAC, seating, workspace, access to electric power, and access to copy machines. Tenant will pay Landlord 10 cents a copy for any copies made on Landlord's machine.

3.11. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

3.12. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant must not abate Rent for any reason.

#### **4. Term, Renewal.**

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

4.02. ?????????? If Tenant is not in default under the Lease, Tenant may ask to renew this Lease for ???? additional ????-year term by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew and approval of the proposed renewal by further ordinance City Council. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

4.03. Renewal Terms are governed by this Lease just as the Initial Term, except for rent. Rent during the first renewal is at \$17 a rentable square foot for years one through three and \$18 a rentable square foot for years four and five. Rent during the second renewal is at the then market rate for comparable premises.????????????

#### **5. Tenant's Affirmative Promises.**

Tenant promises that it will:

5.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Landlord.

5.03. Obtain and pay for all utility services used by Tenant and not provided by Landlord.

5.04. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

5.06. After casualty loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

5.07. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

5.08. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

5.09. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

5.10. Arrange with Landlord in advance for any heating, air-conditioning, or electrical needs in excess of the services provided by Landlord and pay for such additional services as billed by Landlord.

## **6. Indemnity.**

6.01. These definitions apply to the indemnity provisions of this Contract:

6.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death and including matters arising partly out of the negligence of one or more Indemnitees.

6.01.02. "Indemnites" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. "Indemnitor" means Tenant.

**6.02. Indemnitor must indemnify Indemnites, individually and collectively, from all Indemnified Claims.**

**6.03. If Indemnitor and one or more Indemnites are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnites from liability arising from the Indemnites' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnites until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnites.**

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnites..

6.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnites. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnites, not Indemnitor.

6.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the

particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

## **7. Tenant's Negative Promises.**

Tenant promises that it will not:

7.01. Use the Premises for any purpose other than the Permitted Use.

7.02. Create a nuisance.

7.03. Interfere with any other tenant's normal business operations or Landlord's management of the Building.

7.04. Permit waste.

7.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

7.06. Change Landlord's lock system.

7.07. Alter the Premises.

7.08. Allow a lien to be placed on the Premises.

## **8. Landlord's Affirmative Promises.**

Landlord promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

8.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

8.03. Provide the Essential Services.

8.04. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, and (d) other structures or equipment serving the Premises.

8.05. Provide Tenant promptly after receipt of a written request from Tenant with a reconciliation of Tenant's Pro Rata Share of the actual Operating Expenses incurred by Landlord during the preceding calendar year and the estimated Operating Expenses paid by Tenant for the same period and reimburse Tenant for the amount of any estimated Operating Expenses paid by Tenant in excess of Tenant's Pro Rata Share of actual Operating Expenses for the preceding calendar year.

8.06. Provide Tenant with detailed invoices for all heating, air-conditioning, and electrical charges in excess of the Essential Services for which Landlord requests reimbursement.

8.07. Allow Tenant the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe

## **9. Landlord's Negative Promise.**

Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

## **10. Alterations.**

Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any

alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

## 11. Insurance.

11.01. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of Landlord
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to) coverage for the following:	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad form property damages to include fire legal liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability, if alcoholic beverages are served on the Premises	
(h) Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability, including	Combined single limit for bodily injury, death, and property damage of \$1,000,000 per occurrence
(a) Owned/Leased Automobiles	
(b) Non-Owned Automobiles	

(c) Hired Automobiles

5. Property Insurance for physical damage to the property of Tenant, including improvements and betterments      Coverage for replacement cost of Tenant's improvements

11.02. Each insurance policy required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio  
City Hall/2nd Floor  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

and

Department of Capital Improvements  
Management Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Director"

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio This policy cannot be invalidated as to Landlord because of Tenant's breach of representation, warranty, declaration, or condition of this policy."

11.03. If Tenant makes leasehold improvements, Tenant must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover

all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

11.04. Within 30 days after the Commencement Date and promptly after Landlord's later request, Tenant must, at its own expense, deliver certificates to Landlord's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof. Landlord's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

11.05. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

11.06. Nothing in this Lease limits Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

11.07. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

11.08. Landlord will self-insure as it deems advisable. As a political subdivision of the State of Texas, Landlord is subject to the Texas Tort Claims Act, and the obligations of Landlord and the rights of persons claiming against Landlord are subject to that Act.

## **12. Release of Claims/Subrogation.**

**The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance (“Covered Claims”). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.**

## **13. Environmental Matters.**

13.01. “Environmental Laws” means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

13.02. “Hazardous Material” means “hazardous substance,” “pollution or contaminant,” “petroleum,” and “natural gas liquids,” as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

13.03. “Release” means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

13.03. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

13.04. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

13.05. Tenant must to immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

13.06. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than such inspection in any 12-month period.

13.07. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

13.08. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants..

#### **14. Landlord's Municipal Powers.**

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this

Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

## **15. Prohibited Interests in Contracts.**

15.01. 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 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:

- (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.

15.02. Tenant warrants and certifies as follows:

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

15.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

## **16. Casualty/Total or Partial Destruction.**

16.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common

Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises the maintenance of which is not assigned to Tenant under this lease. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

16.02. If the Premises cannot be restored within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

16.03. To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

16.04. If Landlord is obligated to rebuild or chooses to do so, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

16.05. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

## **17. Condemnation/Substantial or Partial Taking.**

17.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

17.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

17.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

**18. Holdover.**

If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) Tenant is a tenant at sufferance and (B) the Base Rent is 200% of what it was immediately before the term ended.

**19. Contractual Lien.**

19.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

19.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale, provided, Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (b) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

19.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the

Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

## **20. Default, Remedies for Default.**

20.01. *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

20.01.01. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord, but Tenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Tenant is in default for failure to pay regularly recurring Rent installments timely even if Landlord does not give notice.

20.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant or any guarantor of this Lease is false or misleading in any material respect when given to Landlord.

20.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

20.01.04. Tenant or any guarantor of the Lease files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws

of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

20.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

20.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

20.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

20.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

20.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

20.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

20.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or

any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

20.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.

20.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

20.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

- (i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,
- (ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord,
- (iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and
- (iv) Tenant must obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

20.03. *Repossession and Alteration of Locks.* Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the

property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

20.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

20.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

20.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

20.07. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

20.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

20.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

20.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

20.11. *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

## **21. Landlord's Mitigation of Damages.**

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

21.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

21.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

21.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

21.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the Building;
- (ii) adversely affect the reputation of the Building; or
- (iii) be incompatible with other users of the Building.

21.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

21.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

- (i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or
- (ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

## **22. Security Deposit.**

22.01. Upon receipt of the Security Deposit, Landlord may hold it with out interest as security for Tenant's performance of its covenants and obligations under this Lease. The Security Deposit is not an advance payment of Rent or a measure of Landlord's damages in case of Tenant's default. Landlord may co-mingle the Security Deposit with other funds of Landlord. If, at any time during the Lease, Rent becomes overdue and unpaid, Landlord may, at its option, apply the Security Deposit to the delinquency. If Tenant defaults in any other respect, Landlord may apply the Security Deposit, or so much thereof as shall be necessary, to compensate the Landlord for loss or damage sustained or suffered by Landlord due to Tenant's breach. If Landlord applies some or all the Security Deposit to cure a Tenant breach, Tenant must, on written demand of Landlord, restore the Security Deposit to the original sum deposited, and Tenant's failure to do so within five days after receipt of demand is a default.

22.02. If Tenant pays all Rent timely and otherwise complies with this Lease, Landlord will return the Security Deposit to Tenant at the end of the Lease. Landlord may deliver the Security Deposit to any purchaser of Landlord's interest in the Premises, and thereupon Landlord is discharged from other liability for the Security Deposit. If Landlord's claims exceed the Security Deposit, Tenant remains liable for the balance of the claims.

## **23. Tenant's Bankruptcy.**

In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

23.01. "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

- (i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.02. "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.03. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

23.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

23.05. If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

23.06. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than 20 days after Tenant's receipt of the proposal, but in no event later than 10 days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and

assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice.

23.07. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

## **24. Warranty Disclaimer.**

**24.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.**

**24.01. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.**

## **25. Abandoned Property.**

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

## **26. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

## **27. Sublease, Assignment.**

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets

are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

## **28. Dispute Resolution.**

28.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

28.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

28.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

28.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

28.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

28.06. Mediator fees must be borne equally.

28.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

## **29. Miscellaneous.**

29.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.**

But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

29.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

29.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

29.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

29.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

29.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

29.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

29.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words

"herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

29.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

29.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

29.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

29.12. *Administrative Actions and Agreements.* The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

29.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

29.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

**30. Public Information.**

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

**In Witness Whereof**, the parties have caused their representatives to set their hands.

**Landlord:**

**Tenant:**

City of San Antonio, a Texas  
municipal corporation

????????????????????

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

**Exhibit A**

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Legal Description and Site Plan Showing the Premises



## Attachment II

Consequently, Contractor agrees to comply with the Special Provisions, affixed hereto and incorporated herein for all purposes as Attachment III.

3.3 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Contract are contingent upon the actual receipt of adequate grant funds to meet City's liabilities hereunder. Should City not receive sufficient funds to make payments pursuant to this Contract or should grant fund awards be reduced, City shall notify Contractor in writing within a reasonable time after such fact has been determined and may, at its option and subject to City Council approval, either terminate this Contract or reduce the Scope of Work and Consideration accordingly.

[3.4 Contractor acknowledges, understands and agrees to comply with the following federal regulations as promulgated in Section 3 Clause of the Housing and Urban Development Act of 1968, as amended:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(l) (u)(Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the contract has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, where not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from further HUD-assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest

## Attachment II

extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).]

### IV. PAYMENT

- 4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, including but not limited to those laws referenced in Section XII hereof, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in Attachment II of this Contract. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.
- 4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request. The Director of the Managing City Department may, in his sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:
- (A) Advance payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that a check is available from the City.
  - (B) The Contractor must deposit City funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited in such account, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor's account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.
  - (C) The City may deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Contract term, projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.
- 4.3 Contractor agrees that reimbursements of eligible expenses shall be made monthly, as determined by the Director of the Managing City Department according to standard procedures followed by the City's Finance Department.

## Attachment II

- 4.4 Contractor agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Managing City Department.
- 4.5 The Contractor shall submit to City all final requests for payment no later than 45 days days from the termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.
- 4.6 Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor).
- 4.7 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
- (A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
  - (B) identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards; authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
  - (C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project;
  - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
  - (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
  - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;
  - (G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
  - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.
- 4.8 Contractor agrees that Contractor costs or earnings claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project or projects funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included in the financial statements that are applicable to the Contractor's Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or

## Attachment II

functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

- 4.10 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to the City. Upon completion or termination of this Contract, all advance payments exceeding allowable costs incurred during the Contract term shall be immediately returned by Contractor to the City upon demand.
- 4.11 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.
- 4.12 Contractor agrees that prior to the payment of any funds under this Contract, and throughout the term of this Contract, Contractor shall maintain financial stability and operate in a fiscally responsible and prudent manner. Contractor agrees that the City may immediately terminate this Contract if the City finds, as solely determined by the City, that Contractor is in such unsatisfactory financial condition as to endanger performance under this Contract. The City may consider evidence such as the apparent inability of Contractor to meet its financial obligations and items that reflect detrimentally on the credit worthiness of Contractor. Relevant factors include, but are not limited to, pending litigation, liens and encumbrances on the assets of Contractor, the appointment of a trustee, receiver or liquidator for all or a substantial part of Contractor's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Contractor. Contractor shall provide any records requested by City that City deems necessary to make such a determination.

### V. PROGRAM INCOME

- 5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. At the sole option of the Director of the Managing City Department, Contractor will either (a) be required to return program income funds to City through the Managing City Department, or (b) upon prior written approval by the Director of the Managing City Department, Contractor may be permitted to retain such funds to be:
  - (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or
  - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.
- 5.2 In any case where Contractor is required to return program income to the Managing City Department, Contractor must return such program income to City within the timeframe that may be specified by the Director of the Managing City Department. If the Director of the Managing City Department grants Contractor authority to retain program income, Contractor must submit all reports required by the Managing City Department within the timeframe specified in the Contract.
- 5.3 Contractor shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.

## Attachment II

- 5.4 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.5 Contractor is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
- 5.6 Contractor shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

### VI. ADMINISTRATION OF CONTRACT

- 6.1 The Contractor agrees to comply with all the terms and conditions that the City must comply within its contract with . . . . . A copy of said contract is attached hereto and incorporated herein for all purposes as Attachment IV.
- 6.2 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of the City, the party ultimately responsible for all matters of compliance with . . . . . and the City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.
- 6.3 Contractor shall not use funds awarded from this Contract as matching funds for any Federal, State or local grant without the prior written approval of the Director of the Managing City Department.
- 6.4 The City shall have the authority during normal business hours to make physical inspections to the operating facility occupied to administer this Contract and to require such physical safeguarding devices as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.
- 6.5 The Contractor Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.
- 6.6 Contractor agrees to comply with the following check writing and handling procedures:
- (A) No blank checks are to be signed in advance;
- (B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.
- (C) Checks issued by 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.

## Attachment II

- 6.7 City reserves the right to request Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.

### VII. AUDIT

- 7.1 If Contractor expends \$500,000.00 or more of City dollars, then during the term of this Contract, the Contractor shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish the Managing City Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to the Managing City Department by Contractor within fifteen (15) days upon receipt of said report or upon submission of said corrective action plan to the auditor.

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of 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 a period of ten (10) days upon the Contractor's receipt of the report.

- 7.2 Contractor agrees that if Contractor receives or expends more than \$500,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (OMBA-133 revision) and Contractor shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within a period not to exceed one hundred twenty (120) days after the end of Contractor's fiscal year to the Federal Audit Clearinghouse in Jeffersonville, Indiana. Contractor may submit reports through the following website: <http://gov.fac@census.gov> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

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

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

- 7.3 If Contractor expends less than \$500,000.00 of City dollars during the term of this Contract, then the Contractor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.
- 7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.
- 7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Contract at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available and shall continue to make available the books, records, documents, reports, and evidence with respect to all matters covered

## Attachment II

by this Contract and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines established by applicable law for this Contract. Said records shall be maintained for the required period beginning immediately after Contract termination, save and except when there is litigation or if the audit report covering such Contract has not been accepted, then the Contractor shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

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

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

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will immediately refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the Contractor is forbidden from reducing Project expenditures and Contractor must use its own funds to maintain the Project.

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

- 7.7 If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit from non-City resources.

### VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, all policies, procedures, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 The Contractor shall submit to the Managing City Department such reports as may be required by the City, including the Contract Monitoring Report which is affixed hereto and incorporated herein as Attachment V. The Contract Monitoring Report is to be submitted by the Contractor no later than the 5<sup>th</sup> business day of each month. The Contractor ensures that all information contained in all required reports submitted to City is accurate.
- 8.3 Contractor agrees to maintain in confidence all information pertaining to the Project/Projects or other information and materials prepared for, provided by, or obtained from City including, without limitation,

## Attachment II

reports, information, project evaluation, project designs, data, and other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon termination of this Contract, Contractor shall return to City all copies of materials related to the Project/Projects, including the Confidential Information.

8.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to 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.

8.5 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon 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 Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.

8.6 Ownership of Intellectual Property. Contractor and City agree that the Project/Projects shall be and remain the sole and exclusive proprietary property of City. The Project/Projects shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project/Projects 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/Projects and the tangible and intangible property rights relating to or arising out of the Project/Projects, 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/Projects 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. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project/Projects, including without limitation, any letters patent,

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copyright, or other protection relating to the Project/Projects, 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 the City.

- 8.7 Within a period not to exceed **90** days from the termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.
- 8.8 Contractor shall provide to the Managing City Department all information requested by the Managing City 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 (name, title, address, telephone number, fax number and e-mail address);
  - (B) Current Bylaws and Charter;
  - (C) Terms of Officers;
  - (D) Amendments to Bylaws;
  - (E) Schedule of anticipated board meetings for current Fiscal Year;
  - (F) Minutes of board meetings that are approved by the Contractor's board
  - (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.
- 8.9 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in section 12.3 of this Contract.

### IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:
- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the Managing City Department, which shall be clearly labeled \_\_\_\_\_; in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed, transmitted or conveyed, 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 shall have been received and approved by the Managing City Department. No officer or employee of the City, other than the City's Risk Manager, shall have authority to waive this requirement.
  - (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereupon City may incur increased risk.
  - (C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies

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

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	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$1,000,000 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, or its equivalent in Umbrella or Excess Liability Coverage.

- (D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by 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: Community Initiatives Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

- (E) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional 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;

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- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
  - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- (F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- (G) If Contractor 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 Contract; 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 Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.
- (I) It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract.

### X. INDEMNITY

#### 10.1 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. 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 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.**

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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.

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.

### XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

11.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Contract:

- (A) SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- (B) Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- (C) Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.
- (D) SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Contractor's bid for this project Contract, attached hereto and incorporated herein as "Attachment VI".

11.2 For this Contract, the Parties agree that:

- (A) The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Contract by reference; and
- (B) The failure of Contractor or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Contract.
- (C) Failure of Contractor or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Contract.

## Attachment II

- (D) During the term of this Contract, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Contractor's SBEDA Plan ("Attachment VI") shall constitute a material breach of the SBEDA Program and this Contract.
  - (E) Contractor shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment VI") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Contractor to the City's Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Contract.
- 11.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Contract:
- (A) Failure of Contractor to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Contract, or failing to allow such SE to perform a Commercially Useful Function; or
  - (B) Modification or elimination by Contractor of all or a portion of the scope of work attributable to an SE upon which the Contract was awarded; or
  - (C) Termination by Contractor of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Contract without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
  - (D) Participation by Contractor in a Conduit relationship with an SE scheduled to perform work that is the subject of this Contract.
- 11.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Contract for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Contractor materially breaches the requirements of the SBEDA Program:
- (A) Terminate this Contract for default;
  - (B) Suspend this Contract for default;
  - (C) Withhold all payments due to the Contractor under this Contract until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
  - (D) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Contract, or from any other amounts due to the Contractor under the Contract.
  - (E) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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- 11.5 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Contract.
- 11.6 **The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.**
- 11.7 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Contract. If the recommended remedy is to terminate the Contract, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.
- 11.8 Special Provisions for Extension of Contracts. In the event the City extends this Contract without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Contract shall establish the following, subject to review and approval by the SBEDA Program Manager:
- (A) a SBEDA Utilization Goal for the extended period; and
  - (B) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Contractor does not meet the SBEDA Utilization Goal; and
  - (C) the required minimum Good Faith Efforts outreach attempts that Contractor shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Contract extension document. The Contractor entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
    - (i) subject Contractor to any of the remedies listed above; and/or
    - (ii) result in a new bid or proposal request of the Contract that was considered for extension.

## XII. APPLICABLE LAWS

- 12.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 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 Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by Federal, State, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable to the funds received by Contractor hereunder:
- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
  - (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
  - (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local

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- 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”.
- 12.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
  - Government Code Chapter 552 pertaining to Texas Public Information Act found at [www.capitol.state.tx.us/statutes/docs/GV/content/htm/gv.005.00.000552.00.htm](http://www.capitol.state.tx.us/statutes/docs/GV/content/htm/gv.005.00.000552.00.htm)
  - Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
  - Texas Local Government Code can be found at <http://www.capitol.state.tx.us/statues/go/go0055200toc.html>
- 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.
- 12.4 Contractor shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk’s Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- (A) Title VII of the Civil Rights Act of 1964, as amended;
  - (B) Section 504 of the Rehabilitation Act of 1973, as amended;
  - (C) The Age Discrimination Act of 1975, as amended;
  - (D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
  - (E) Fair Labor Standards Act of 1938, as amended;
  - (F) Equal Pay Act of 1963, P.L. 88-38; and
  - (G) All applicable regulations implementing the above laws.
- 12.5 The Contractor 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 of the Contract. The Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to:
- (A) worker’s compensation;
  - (B) unemployment insurance;
  - (C) timely deposits of payroll deductions;
  - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2’s Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
  - (E) Occupational Safety and Health Act regulations; and
  - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 12.6 Contractor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

- 12.7 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if Contractor receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), Contractor shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of Contractor receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state's economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.
- 12.8 Contractor agrees to abide by any and all future amendments or additions to all laws, rules, regulations, policies and procedures pertinent to this Contract as they may be promulgated.
- 12.9 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations.
- 12.10 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
  - (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 13.5 Contractor acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or

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shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that neither the Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. (If Contractor is a business entity, the Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

### XIV. TERMINATION

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

### XV. PROHIBITION OF POLITICAL ACTIVITIES

## Attachment II

- 15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 15.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 15.3 The prohibitions set forth in Article XV., sections 15.1 and 15.2 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.
- 15.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the Managing City Department. Contractor shall list the name and number of a contact person from the Managing City Department on the statement that Contractor's personnel can call to report said violations.
- 15.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

## XVI. PERSONNEL MANAGEMENT

- 16.1 The Contractor 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.
- 16.2 Contractor is permitted to pay its full time employees for the total number of holidays authorized by the City Council for City employees. If the Contractor elects to observe more than the total number of holidays authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.

## Attachment II

- 16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department, as evidenced through a written amendment to this Contract approved by the Director of the Managing City Department.
- 16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.
- 16.5 The Contractor agrees to provide the City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 16.6 At the sole discretion of the Director of the Managing City Department, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
  - (B) To serve as a juror;
  - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of said relative. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or
  - (D) To attend seminars or workshops;
- 16.7 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

### XVII. ADVERSARIAL PROCEEDINGS

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

### XVIII. CITY-SUPPORTED PROJECT

- 18.1 Contractor shall publicly acknowledge that this Project is supported by the City as directed by the Managing City Department.

### XIX. EQUIPMENT

## Attachment II

- 19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at Contract's termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Contract. Equipment 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. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.
- 19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.
- 19.3 Contractor shall maintain records on all items obtained with City funds to include:
- (A) A description of the equipment, including the model and serial number, if applicable;
  - (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
  - (C) An indication of whether the equipment is new or used;
  - (D) The vendor's name (or transferred from);
  - (E) The location of the property;
  - (F) The property number shown on the property tag; and
  - (G) A list of disposed items and disposition
- 19.4 The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). 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 lost, stolen, missing, damaged and/or destroyed equipment/property. The report submitted by the Contractor to the Managing City Department shall minimally include:
- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
  - (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
  - (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.
- 19.5 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.
- 19.6 The Contractor shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

## XX. TRAVEL

- 20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present.
- 20.2 Contractor agrees that mileage reimbursement paid to Contractor's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with Internal Revenue

## Attachment II

Service (IRS) rules. Contractor further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by the City. Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

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

### XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

### XXII. DEBARMENT

- 22.1 Contractor certifies 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.
- 22.2 Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

### XXIII. ASSIGNMENT

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

### XXIV. AMENDMENT

- 24.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing City Department shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws, and in the following circumstances:

A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however,

## Attachment II

that the cumulative total of all amendments executed without City Council approval pursuant to this subsection and increasing Contract funding during the term of this Contract shall not exceed the foregoing amount;

B. modifications to the Balanced Scorecard Performance Plan set forth in Attachment I hereto, so long as 1) the terms of the amendment stay within the parameters set forth in the Executive Summary, also set forth in Attachment I hereto;

C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment II) of this Contract;

D. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department.

E. modifications to Article III herein to reduce the total amount of reimbursement that shall be made to the Contractor by City, and to amend the budget accordingly which is set forth in Attachment II hereto, in the event that Contractor does not meet the requirements set forth in Article I Overview of the Funding Guide, which is set forth in Attachment III hereto. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 24.1(E).

### XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City and Grantor of the grant source, if so required by said Grantor.
- 25.2 Contractor must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.
- 25.3 Any work or services for sub-contracting hereunder, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.
- 25.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

XXVI. OFFICIAL COMMUNICATIONS

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

City:

Director  
Department of Community Initiatives  
115 Plaza de Armas, Ste 200  
San Antonio, Texas 78205

Contractor:

Executive Director

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

XXVII. VENUE

- 27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar, County, Texas.

XXVIII. GENDER

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

XXIX. AUTHORITY

- 29.1 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 the City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

XXX. LICENSES AND TRAINING

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

XXXI. INDEPENDENT CONTRACTOR

- 31.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the City shall in no way be responsible 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.
- 31.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 31.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

XXXII. SEVERABILITY

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

XXXIII. CONTRIBUTION PROHIBITIONS

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

- 33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 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. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response
- 33.2 Contractor acknowledges that the City has identified this Contract as high risk.

**Attachment II**

33.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 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.

**XXXIV. ENTIRE CONTRACT**

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

In witness of which this Contract has been executed effective the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF SAN ANTONIO:**

**CONTRACTING AGENCY:**

\_\_\_\_\_  
Director  
Department of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Board President (if required by Agency)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**ATTACHMENTS**

- Attachment I – Executive Summary and Balance Scorecard Performance Plan
- Attachment II – Budget
- Attachment III – Special Provisions
- Attachment IV – U.S. Department of Housing and Urban Development Contract
- Attachment V – Contract Monitoring Report
- Attachment VI – SBEDA Plan