

AN ORDINANCE 2012-05-10-0341

AUTHORIZING AN AGREEMENT WITH SA2020 AND THE UNIVERSITY OF TEXAS AT SAN ANTONIO FOR THE DEVELOPMENT AND IMPLEMENTATION OF KEY INDICATORS ASSOCIATED WITH THE SA2020 FINAL REPORT IN AN AMOUNT UP TO \$160,000.00 WITH A TERM BEGINNING ON MAY 10, 2012 AND ENDING ON AUGUST 31, 2013.

* * * * *

WHEREAS, in 2010, Mayor Julián Castro appointed Darryl Byrd, Sonia Rodriguez, and Graham Weston to be Tri-Chairs of SA2020 and tasked them with forming a Steering Committee to guide the residents of San Antonio through a planning process in order to create a vision for the San Antonio that we want to be in the year 2020; and

WHEREAS, the Mayor and the Steering Committee planned a total of 6 community-wide meetings where residents had the opportunity to participate in city-wide community engagement to develop goals and targets for the city to achieve by the year 2020; and

WHEREAS, on September 2, 2010, City Council approved up to \$ 180,000 for the community engagement process of SA2020; and

WHEREAS, in 2011, SA2020, was established as a Texas non-profit organization to lead the community-wide collaboration to execute SA2020's mission to catalyze the entire San Antonio community (individual, private, public and civic) into passionate, focused, and sustained action, through investment, to achieve the shared goals that will transform San Antonio into a world class city by the year 2020; and

WHEREAS, on November 3, 2011, City Council approved a no cost lease agreement with the University of Texas at San Antonio for SA2020 office space; and

WHEREAS, City Council allocated \$160,000.00 for the engagement of Dr. Lloyd Potter of the University of Texas at San Antonio - Institute for Demographic and Socioeconomic Research in the City's FY2012 budget; and

WHEREAS, the City of San Antonio (City) seeks to enter into an agreement with the University of Texas at San Antonio (UTSA) to provide conceptual, data collection and management, and reporting related services in the development, implementation and maintenance of key indicators and supporting indicators identified within the SA2020 report; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is hereby authorized to execute an agreement with SA2020 and the University of Texas at San Antonio for the development and

implementation of key indicators associated with the SA2020 final report in an amount up to \$160,000.00 with a term beginning on May 10, 2012 and ending on August 31, 2013. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachments I**.

SECTION 2. Funding in the amount of \$160,000.00 for this ordinance is available in Fund 11001000, Cost Center 7001990053 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to the University of Texas at San Antonio - Institute for Demographic and Socioeconomic Research and should be encumbered with a purchase order. All expenditures will comply with the approved operating budget for current and future fiscal years.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

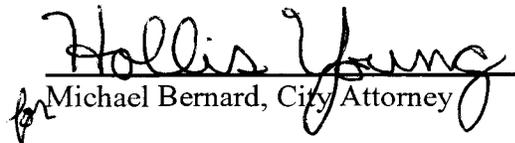
PASSED AND APPROVED this 10th day of May, 2012.

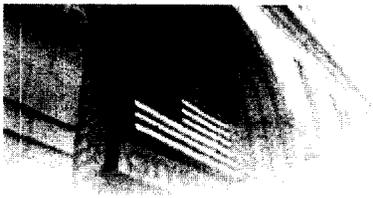

M A Y O R
Julián Castro

ATTEST:


Leticia M. Vasek, City Clerk

APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 4C

Name:	4A, 4B, 4C						
Date:	05/10/2012						
Time:	09:44:28 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an agreement with SA2020 and the University of Texas at San Antonio for demographic research and reporting in an amount up to \$160,000.00 for a term beginning on May 10, 2012 and ending on August 31, 2013.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1	x					
Ivy R. Taylor	District 2		x			x	
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				x
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

STATE OF TEXAS § An AGREEMENT between
 § The CITY of SAN ANTONIO, SA2020 and
 COUNTY OF BEXAR § The UNIVERSITY OF TEXAS at SAN ANTONIO

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "CITY"), on behalf of the City Manager's Office (hereafter referred to as the "CMO"), acting by and through the City Manager for the City of San Antonio, or her designee, pursuant to Ordinance No. 2012-05-10-____, passed and approved on the 10th day of May, 2012, The University of Texas at San Antonio (UTSA), a member institution of The University of Texas System ("System") and an agency of the State of Texas on behalf of the Institute for Demographic and Socioeconomic Research (hereinafter referred to as "CONTRACTOR"), and SA2020, a Texas, Non-Profit corporation (hereinafter referred to as SA2020), which may all be referred to herein collectively as the "Parties".

WHEREAS, the CITY wishes to provide support to SA2020 to meet and achieve identified goals and targets set out in the SA2020 Report, dated March 19, 2011, and found in its entirety on the website: www.sa2020.org and as further defined herein; and

WHEREAS, the CONTRACTOR has the resources to provide services related to the development, implementation, and maintenance of key indicators and supporting indicators identified within the SA2020 report; and

WHEREAS, the CITY of San Antonio will provide funding to CONTRACTOR to provide the aforementioned services to SA2020 as part of the effort to meet and achieve identified goals and targets set out in the SA2020 Report; and

WHEREAS, the City Council for the CITY of San Antonio has determined and found that the goals and targets set out in the SA2020 Report serve a public purpose that include, the promotion of public health and welfare, and economic development; and

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

I.
DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"CITY" is defined in the preamble of this Agreement and includes its successors and assigns.

"CONTRACTOR" is defined in the preamble of this Agreement and includes its successors.

"CMO" shall mean the City Manager for the CITY of San Antonio, or her designee.

"Project" shall mean the general scope of services of this Agreement as well as the overall objectives and goals of SA2020.

“Project Director” shall be CONTRACTOR’s designated employee under whose direction the Project will be conducted, namely Lloyd Potter.

“SA2020” is defined in the preamble of the Agreement and includes its successors and assigns, and shall also mean the entity charged to map and achieve the identified community vision of economic growth and a top-notch quality of life for all San Antonians which was developed from an open and accessible visioning process for all San Antonio residents.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on May 10, 2012 and terminate on August, 31, 2013.

2.2 CONTRACTOR agrees and understands that if funding is not received by CITY in a sufficient amount to pay any of CITY’s obligations under the terms of this Agreement, then this Agreement will terminate and neither CITY nor CONTRACTOR will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

2.3 The Parties anticipate that this Agreement may be amended and extended beyond August 31, 2013, so that periodically updated information for each indicator described in Article III below, is provided on at least an annual basis, on or before March 31 of each calendar year until the year 2020. Any amendment or extension of this agreement must be in writing and agreed to and signed by all parties consistent with Article XX of this agreement.

III. SCOPE OF SERVICES

3.1 CONTRACTOR agrees to provide the services described in this Article III (Scope of Services) for the benefit of SA2020, in consultation and coordination with the CITY, in exchange for the compensation described in Article IV (Compensation).

3.2 The CONTRACTOR will provide conceptual, data collection and management, and reporting related services in the development, implementation, and maintenance of key indicators and supporting indicators identified within the SA2020 report, which can be found in its entirety at: www.sa2020.org, and is hereby incorporated for all purposes within this agreement, with particular emphasis on developing data capacity to assess and monitor progress of education related indicators.

3.3 CONTRACTOR shall provide the following deliverables:

3.3.1 TASK 1: CONTRACTOR will review key indicators and supporting indicators in the SA2020 report and produce a report for each identified “Vision statement” that provides an assessment for each indicator regarding collectability, data

quality, and utility as an indicator and where indicated, suggest alternative indicators and new or additional indicators. This task will include the following:

- A) Review of SA2020 indicators to determine which measures are currently available, which indicators will (and will not) have repeat measures available.
- B) Identify indicators and associated items that may be less than optimal with a statement articulating concerns and potential solutions for each.
- C) CONTRACTOR and SA2020 will identify additional indicators and measures that may be relevant for monitoring progress toward achieving Vision statements, as needed. For each new indicator identified, provide a statement justifying consideration.
- D) Review current indicators for which information is available and document the source. Also provide a contact for each source or provide specific details about the location and description of how to access the information and the frequency with which each indicator source is updated.
- E) Identify indicators for which a measure is not currently available. For each indicator without a measure source: 1) provide a description of the reasons the measure is not available, 2) identify or suggest an alternative indicator or measure for the indicator.
- F) Meet with SA2020 and CITY staff and representatives to review findings and finalize a set of indicators with associated measures that will become the basis of Task 2 set out below in 3.3.2.

3.3.1.1 CONTRACTOR will provide the following to SA2020 and CITY by July 15, 2012, as part of the responsibilities set out in 3.3.1 above, with the understanding that CONTRACTOR will provide the following prior to July 15, 2012, if completed earlier:

- a) A report that provides an assessment for each indicator; and
- b) A list of indicators and measures with a description of sources and relevant contact and background information.

3.3.2 TASK 2: CONTRACTOR will collect 2011 baseline and periodically updated information for each indicator and update information for each indicator as information becomes available. This task will include the following:

- A) Design an indicator monitoring system and database for managing information and data for each Vision statement and all associated indicators to include source and other documentation.
- B) Following completion of Task 1, collect baseline measures for each indicator including documentation of source and other relevant information.
- C) Following completion of activities for 3.3.2 (B), assess availability of updated measures for each indicator on a quarterly basis over the project period. Add updated measures and related information to the indicator monitoring system as available.

3.3.2.1 CONTRACTOR will provide the following to SA2020 and CITY by November 15, 2012, as part of the responsibilities set out in 3.3.2 above, with the understanding that CONTRACTOR will provide the following prior to November 15, 2012, if completed earlier:

- a) Report providing a description and functionality of the indicator monitoring system;
- b) Report that provides 2011 baseline measures for each indicator;
- c) Report that provides 2012 updated measures for each indicator (as available).

3.3.3 TASK 3: CONTRACTOR will develop, launch, and maintain an internet-based “dashboard” for displaying current and historical information about indicators. This task will include the following:

- A) Develop a prototype (conceptual design, website structure, and design markup) for the internet based “dashboard”;
- B) Meet with SA2020 and CITY staff members to review and approve the “dashboard” prototype.
- C) Develop the “dashboard” website on a development website (not accessible to the public).
- D) Incorporate indicator information into the “dashboard” and publish to a development website for SA2020 and CITY staff members to review and approve.
- E) Upon SA2020 and CITY approval, publish the indicator website to the production website (publically accessible).

F) Update indicator measures as new information becomes available on the development website for review and approval of SA2020 and the CITY before publishing updated information to the production website.

3.3.3.1 CONTRACTOR will provide the following to SA2020 and CITY by March 15, 2013, as part of the responsibilities set out in 3.3.3 above, with the understanding that CONTRACTOR will provide the following prior to March 15, 2013, if completed earlier:

- a) A prototype of the dashboard website;
- b) A draft (development) website that provides information about indicators and associated measures for each vision area and is maintained and updated with new information over the project period;
- c) A published website that provides 2011 information about indicators and associated measures for each vision area and is maintained and updated with 2012 information over the project period; and
- d) A report will be provided on or before March 31, 2013 that details any changes to the dashboard website since it was launched.

3.3.4 TASK 4: CONTRACTOR will develop and maintain data on student performance and progress for San Antonio area public schools. This task will include the following:

- A) Establish data sharing agreements with participating school districts and identify a contact person at each school district.
- B) Define data elements to be shared and if needed, methods to link high school student data with college enrollment and performance data.
- C) Develop and submit an application to the UTSA Institutional Review Board for approval to work with human subjects data.
- D) Receive and manage data from school districts on a secure server.
- E) Define elements of a summary report that will be generated in aggregate and for each participating school district that will serve, minimally, as measures of education related indicators.
- F) Receive approvals from SA2020 and the CITY to produce report as defined under subtask 3.3.4 (E).

- G) Produce a set of baseline reports based upon data thru December 31, 2011 and, an updated report utilizing data collected thru calendar year 2012 on or before March 31, 2013, consistent with 3.3.4(E).
- H) Define a protocol for accessing the data for research purposes to be approved by SA2020 and the CITY and each participating school district before it is implemented.
- I) Manage access to data received consistent with the protocol.

3.3.4.1 CONTRACTOR will provide the following to SA2020 and CITY by August 30, 2013, as part of the responsibilities set out in 3.3.4 above, with the understanding that CONTRACTOR will provide the following prior to August 30, 2012, if completed earlier:

- a) A document that defines a process for data sharing and elements of data to be shared;
- b) Notice of UTSA Institutional Review Board approval to work with human subjects data;
- c) Periodic summary report of data that have been received and are being housed;
- d) 2011 baseline summary report from data and, minimally, an updated report on or before March 31, 2013,
- e) Approved protocol for accessing data;
- f) A report describing who accessed the data and what they are doing with the data.

3.4 All work performed by CONTRACTOR hereunder shall be performed to the reasonable satisfaction of the Chief Executive Officer of SA2020 and the City Manager, or her designee (the "Reviewing Parties"). The determination made by the Reviewing Parties shall be final, binding and conclusive on all Parties hereto. CITY shall be under no obligation to pay for any work performed by CONTRACTOR, which is not reasonably satisfactory to the Reviewing Parties. CITY and SA2020 shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should CONTRACTOR's work not be satisfactory to the Reviewing Parties; however, CITY shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should CITY and/or SA2020 elect not to terminate.

IV.
COMPENSATION TO CONTRACTOR

4.1 In consideration of CONTRACTOR's performance in a satisfactory and efficient manner, as determined by the Reviewing Parties, of all services and activities set forth in this Agreement, CITY agrees to pay CONTRACTOR an amount not to exceed ONE HUNDRED SIXTY THOUSAND AND NO/100THS (\$160,000.00) as total compensation, which is budgeted for such payment, as set forth below:

- 4.1.1 Payment of \$40,000.00 upon completion and acceptance of work set out in 3.3.1;
- 4.1.2 Payment of \$40,000.00 upon completion and acceptance of work set out in 3.3.2;
- 4.1.3 Payment of \$40,000.00 upon completion and acceptance of work set out in 3.3.3;
- 4.1.4 Payment of \$40,000.00 upon completion and acceptance of work set out in 3.3.4.

4.2 No additional fees, expenses, or any indirect costs of CONTRACTOR shall be charged by CONTRACTOR nor be payable by CITY. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total payment to CONTRACTOR as specified in section 4.1 above. Total payments to CONTRACTOR cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved, as necessary, by the San Antonio City Council by passage of an ordinance therefore. All payments will be made in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, as hereafter amended.

4.3 Final acceptance of deliverables requires written approval as provided in Section 3.4 above. Payment will be made to CONTRACTOR following such written approval. CITY shall not be obligated or liable under this Agreement to any party, other than CONTRACTOR, for the payment of any monies or the provision of any goods or services.

4.4 The CONTRACTOR agrees to submit an invoice in conjunction with the presentment of deliverables for each identified task in Article III for the corresponding amount set out in Section 4.1 above. Payment of eligible expenses, as determined by the CITY, will be made according to standard procedures followed by CITY, as requested upon receipt of invoice from the CONTRACTOR. Invoices will be due upon submission of task deliverables.

V.
OWNERSHIP OF PROJECT MATERIALS

5.1 CITY and SA2020 each reserve the non-exclusive right, including each and every copyright, to use and reproduce all reports, data and materials delivered pursuant to this Agreement (the "Project Materials") and reserve the right to authorize others to use or reproduce such Project Materials. CITY and SA2020 understand that under CONTRACTOR policies, copyright ownership in any works authored by CONTRACTOR's faculty belongs to that author and not CONTRACTOR. Therefore, CONTRACTOR does not exercise any authority to bind its faculty to any copyright use or transfer agreement. CITY and SA2020 also acknowledge that local governmental records are public records and as such, CONTRACTOR cannot transfer or otherwise confer any right to CITY or SA2020 any rights in these materials. Nothing herein is

intended nor shall it be construed to prohibit CONTRACTOR or its faculty access to the database, or to transfer any ownership in CONTRACTOR's best practice and benchmarking information to the CITY or SA2020.

5.2 Notwithstanding anything in this Contract to the contrary, CONTRACTOR has the right to use Project Materials to produce scholarly works for publication. In the event that CONTRACTOR or its faculty contributors publishes the results of this study or uses any of the Project Materials for educational activities, or permits any third party to do so, CONTRACTOR or its faculty contributors shall acknowledge CITY's contribution to the Project in any such publication.

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

VI.

DOCUMENTS AND RETENTION OF RECORDS

6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder, including Project Materials, (hereafter referred to as "Documents"), and with appropriate notice shall make the Documents reasonably available to the CITY and SA2020, or any of their duly authorized representatives, for purposes of audit, inspection, examination, transcription, and making excerpts or copies of same by CITY and SA2020 and any of its authorized representatives, for as long as such Documents are retained.

6.2 CONTRACTOR agrees to maintain Documents pertinent to this Agreement in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. If an audit, litigation, or other action involving the Documents has been initiated before the end of the retention period required in accordance with the terms hereof, CONTRACTOR agrees to maintain the Documents until the end of such period or until the audit, litigation, or other action is completed, whichever is later.

6.3 The Public Information Act, Texas Government Code Section 552.02 1, requires the CITY to make public information available to the public. Under Texas 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 or other records within its possession pursuant to this Agreement, CONTRACTOR shall (a) within one (1) business day of receiving the requests forward such requests to CITY for notification purposes and to afford the CITY the opportunity to assert any applicable arguments or protections necessary to protect the information, and (b) take action as authorized under the Public Information Act to protect information that may be confidential pursuant to State or federal law. If the requested information is confidential pursuant to State or federal law, CONTRACTOR shall submit to CITY a list of specific statutory authority mandating confidentiality no later than three (3) business days following CONTRACTOR's receipt of such request.

VII. **TERMINATION**

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

7.2 Termination Without Cause. This Agreement may be terminated by the CITY or UTSA upon 30 calendar days' written notice to all other parties, which notice shall be provided in accordance with Article VIII Notice. SA2020 may terminate this Agreement upon prior consultation with CITY regarding the reasons for termination, and 30 calendar days' written notice to UTSA.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, CITY and/or SA2020 (upon prior consultation with the CITY) may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

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

7.4 Defaults With Opportunity for Cure. Should any party default in the performance of this Agreement by i) failing to perform or failing to comply with any covenant herein required, or ii) performing unsatisfactorily or failing to deliver any of the items in this Agreement or any of its attachments, the other party shall deliver written notice of said default specifying such matter(s) in default. Such notice shall be provided in accordance with Article VIII. Notice. The defaulting party shall have fifteen (15) calendar days after receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such period, the other party shall have the right, without further notice, to terminate this Agreement in whole or in part as the terminating party deems appropriate.

7.5 In the event of default by CONTRACTOR, and its failure to cure in a manner consistent with this Agreement, CITY and/or SA2020 (upon prior consultation with the CITY) shall further have the right, without further notice, to terminate this Agreement and to contract with another contractor to complete the work required in this Agreement. CITY shall also have the right to offset the cost of said new Agreement with a new contractor against CONTRACTOR's future or unpaid invoice(s), subject to the duty on the part of CITY to mitigate its losses to the extent required by law.

7.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.7 Regardless of how this Agreement is terminated, CONTRACTOR shall affect an orderly transfer to CITY and SA2020 or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY or SA2020, all completed or partially completed Documents and any other Project Materials, regardless of storage medium, produced by CONTRACTOR as a result of or pertaining to the Project or provided to CONTRACTOR, if so requested by CITY or SA2020, or shall otherwise be retained by CONTRACTOR in accordance with Article VI. Documents and Retention of Records. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY or SA2020 and shall be completed at CONTRACTOR's sole cost and expense. Payment of compensation due or to become due to CONTRACTOR is conditioned upon delivery of all such Documents.

7.8 Within forty-five (45) calendar days of early termination of this Agreement, CONTRACTOR shall submit to CITY and SA2020 its claims for monies owed by CITY for services performed under this Agreement through the effective date of termination. Failure by CONTRACTOR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by CONTRACTOR of any and all right or claims to collect moneys that CONTRACTOR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.9 Upon the effective date of termination of this Agreement, CONTRACTOR shall cease all operations of work being performed by CONTRACTOR or any of its subcontractors pursuant to this Agreement.

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

VIII. **NOTICE**

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in

writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for CITY, to:

City Clerk	AND	Edward Benavides, Chief of Staff
City of San Antonio		Office of the City Manager
P.O. Box 839966		P.O. Box 839966
San Antonio, Texas 78283-3966		City of San Antonio
		San Antonio, Texas 78205

If intended for CONTRACTOR, to:

James J. Casey, Jr., J.D.
Executive Director
Office of Grants, Contracts, and Industrial Agreements
The University of Texas at San Antonio
One UTSA Circle
San Antonio, Texas 78249

With copy to:

Dr. Lloyd Potter
Institute for Demographic & Socioeconomic Research
The University of Texas at San Antonio
501 West Cesar E. Chavez Boulevard
MNT 4.470C
San Antonio, TX 78207

If intended for SA2020, to:

James Darryl Byrd
Chief Executive Officer
301 S.Frio, Suite 450
San Antonio, TX 78807

IX.
[RESERVED]

X. **AUDIT**

10.1 CONTRACTOR, as an agency of the State of Texas, is audited by the State Auditor's Office in compliance with the Office of Management and Budget (OMB) Circular A-133, as amended. The State Auditor's report can be found at <http://www.sao.state.tx.us>. Should the State Auditor's Office require corrective action pursuant to this Agreement, then a copy of the corrective action plan shall be submitted to the Reviewing Parties by CONTRACTOR within fifteen (15) days of submission of such corrective action plan to the State Auditor

10.2 The 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 CITY and SA2020 within a period of ten (10) days upon the CONTRACTOR's receipt of the report.

10.3 The CITY and/or SA2020 reserve the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement, with prior written notice to CONTRACTOR, at any and all times deemed necessary by CITY, not to exceed two times per 12 month period. 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 Documents, which shall continue to be available in accordance with Article VI. Documents and Retention of Records. CONTRACTOR acknowledges that this provision shall not limit the CITY from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the CITY's attention which are other than routine.

10.4 The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all Documents and evidence, including all books and records used by CONTRACTOR in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

10.5 The CONTRACTOR acknowledges that it has its own accounting and administrative procedures for planning, controlling, monitoring and reporting fiscal matters. CONTRACTOR agrees that it will adhere to its procedures and provide information to the CITY regarding its procedures as reasonably requested by the CITY in accordance with the provisions herein.

10.6 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.

10.7 Should any expense or charge that has been paid be subsequently disapproved or

disallowed as a result of any site review or audit, the CONTRACTOR will promptly refund such amount to the CITY no later than twenty (20) business days from the date of notification of such disapproval or disallowance by the CITY. At its sole option, the CITY 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 in accordance with the above provision. 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 check, cashier's check or money order. Should the CITY, at its sole discretion, deduct such claims from subsequent reimbursements, the CONTRACTOR is forbidden from reducing Project expenditures and CONTRACTOR must use its own funds to maintain the Project.

10.8 CONTRACTOR agrees and understands that all expenses, fees, fines and penalties 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 Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of the CITY.

10.9 If the CITY determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such requested audit, except in the event that the requested audit determines that violations due to negligence or fraud on the part of the CONTRACTOR have occurred, in which case the CONTRACTOR agrees that it shall be responsible for reimbursement of the costs of the audit.

XI.
ADMINISTRATION OF AGREEMENT
AND RESTRICTIONS ON USE OF FUNDS

11.1 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, such dispute shall be settled through good faith negotiation between the disagreeing parties.

11.2 CONTRACTOR shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the CITY and SA2020.

11.3 Within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, CONTRACTOR shall submit all required deliverables to SA2020 and 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.

11.4 Unless otherwise provided herein, all Documents, policies and procedures, or other information requested in writing by the CITY and/or SA2020 shall be submitted by

CONTRACTOR to CITY and/or SA2020 within (10) working days of the request. The parties agree to reasonably cooperate to meet deadlines related to audit requirements. In the event that CONTRACTOR fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the CITY may, upon reasonable notice, suspend reimbursements to CONTRACTOR until such reports are delivered to CITY. Furthermore, the CONTRACTOR will ensure that all information contained in all required reports or information submitted to CITY and SA2020 is accurate.

11.5 Unless disclosure is authorized by the CITY and/or SA2020 in writing, CONTRACTOR agrees to maintain in confidence information and materials provided by, or obtained from CITY, (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. CONTRACTOR shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information, provided that CONTRACTOR's obligation shall not apply to information that: a) is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure; b) is already in the recipient CONTRACTOR's possession at the time of disclosure thereof; c) is or later becomes part of the public domain through no fault of the CONTRACTOR; d) is received from a third party having no obligations of confidentiality to CITY; or e) is independently developed by CONTRACTOR. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, CONTRACTOR shall give the point of contact for CITY identified in Section 8.1 prior written notice that such disclosure is required with a full and complete description regarding such requirement. CONTRACTOR shall establish and/or maintain specific procedures designed to meet the obligations of this Article. In order to protect CITY'S CONFIDENTIAL INFORMATION, CONTRACTOR will provide CITY with a draft manuscript at least thirty (30) days prior to publication for review and comment. CITY will provide written notice to CONTRACTOR within (30) days of receipt of draft manuscript specifically identifying any information deemed to be CONFIDENTIAL INFORMATION under the provisions of this Article and specify the manner and degree that CONTRACTOR may disclose said information. However, CONTRACTOR shall have the final authority to determine the scope and content of any publication. This Article shall not be construed to limit any right of the CITY, SA2020 or their authorized representatives to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement, nor shall it be construed to limit CONTRACTOR's right to publish. Upon termination or expiration of this Agreement, CONTRACTOR shall return to CITY and/or SA2020 all copies of materials related to the Project, including the Confidential Information, provided however that one copy may be retained in a secure manner by CONTRACTOR solely for the purpose of determining any ongoing obligations hereunder. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement for a period of three (3) years following such termination. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

11.6 Adversarial proceedings. The CONTRACTOR agrees to comply with the following special provisions, provided such provisions are not in conflict with any state or

federal law:

- (A) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY, SA2020 or any other public entity; and,
- (B) The CONTRACTOR, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the CITY remains unresolved.

XII. PROHIBITED POLITICAL ACTIVITY

12.1 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 Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

12.2 CONTRACTOR agrees that no funds provided under this Agreement 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.

12.3 The prohibitions set forth in Sections 12.1 and 12.2 above 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.

12.4 To ensure that the above policies are complied with, CONTRACTOR shall have the Project Director read this Agreement and acknowledge that he has read and understands all of the terms and conditions. The Project Director will ensure that all personnel who are paid out of Agreement funds comply with all terms and conditions.

12.5 CONTRACTOR agrees that in any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the CONTRACTOR under this Agreement may, at the CITY's discretion, be withheld until the situation is resolved, or the appropriate member of the CONTRACTOR's personnel is terminated.

12.6 This Article XII 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 Agreement funds.

XIII. INSURANCE

13.1 CONTRACTOR and the CITY each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

13.2 With respect to CONTRACTOR, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

XIV. INDEMNIFICATION

14.1 CONTRACTOR and the CITY acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *etc. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. CONTRACTOR, CITY and SA2020 shall each promptly notify the other Parties in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

XV.
[Reserved]

XVI.
ASSIGNMENT AND SUBCONTRACTING

16.1 CONTRACTOR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of CONTRACTOR. CONTRACTOR, its employees or its subcontractors shall perform all necessary work.

16.2 Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the CITY and SA2020. As a condition of such consent, if such consent is granted, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor contractor, assignee, transferee or subcontractor.

16.3 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void *ab initio* and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, CITY and/or SA2020 may, at its option, cancel this Agreement and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, in accordance with this Agreement, notwithstanding any other remedy available to CITY or SA2020 under this Agreement. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this Agreement, nor shall it relieve or release CONTRACTOR from the payment of any damages to CITY or SA2020, which CITY or SA2020 sustain as a result of such violation.

XVII.
INDEPENDENT CONTRACTOR

17.1 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.

17.2 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.

17.3 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.

XVIII.
NONDISCRIMINATION POLICY

18.1 The CONTRACTOR shall comply with all federal, State, or local laws, rules, and orders prohibiting discrimination, and 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.

XIX.
CONFLICT OF INTEREST

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

19.2 CONTRACTOR certifies, and this Agreement is made in reliance thereon, that neither the CONTRACTOR, nor any of its officers, employees and agents performing under this CONTRACT is an officer or employee of the CITY as defined by the City Ethics Code. CONTRACTOR further certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XX.
AMENDMENTS

20.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by authorized representatives of CITY, SA2020 and CONTRACTOR. The CMO or her designee may execute Agreement amendments on behalf of CITY in the following circumstances a) no cost extensions up to two years, b) budget adjustments authorized by the funding agency so long as the total dollar amount of the budget remains unchanged, c) modifications to the performance measures listed in the Agreement so long as the terms of the amendment stay within the parameters set forth in the statement of work of said Agreement and d) changes in state or federal regulations.

XXI.
SEVERABILITY

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

XXII.
LICENSES/CERTIFICATIONS

22.1 CONTRACTOR certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXIII.
COMPLIANCE

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

XXIV.
NONWAIVER OF PERFORMANCE

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

XXV.
LAW APPLICABLE

25.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

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

XXVI.
LEGAL AUTHORITY

26.1 CONTRACTOR represents and certifies the person signing on behalf of CONTRACTOR is fully authorized by CONTRACTOR to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all of the terms, conditions, provisions and obligations herein contained.

XXVII.
PARTIES BOUND

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

XXVIII.
CAPTIONS

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

XXIX.
DEBARMENT

29.1 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.

29.2 CONTRACTOR shall provide immediate written notice to CITY and SA2020, in accordance with this Agreement, if, at any time during the term of this contract, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXX.
ENTIRE AGREEMENT

30.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XX. Amendments.

EXECUTED and **AGREED** to this the _____ day of May, 2012.

CITY OF SAN ANTONIO

The UNIVERSITY OF TEXAS at SAN ANTONIO

Printed Name: _____

Title: _____

Date: _____

Printed Name:

James J. Casey, Jr., J.D.

Title: Executive Director
Office of Grants
Contracts, and Industrial
Agreements

Date: _____

Approved as to Form:

City Attorney

SA2020

Printed Name: James Darryl Byrd

Title: Chief Executive Officer

Date: _____