

AN ORDINANCE      2013-02-14-0118

**AUTHORIZING A CONTRACT WITH UNITED WAY OF  
SAN ANTONIO AND BEXAR COUNTY FOR  
REIMBURSEMENT OF OVERTIME EXPENSES IN AN  
AMOUNT UP TO \$320,000.00 INCURRED BY THE SAN  
ANTONIO POLICE DEPARTMENT IN SUPPORT OF THE  
EASTSIDE PROMISE NEIGHBORHOOD PROGRAM.**

\*\*\*\*\*

**WHEREAS**, United Way of San Antonio and Bexar County (UW), the fiscal agent for the Eastside Promise Neighborhood (EPN), a grantee through the U.S. Department of Education (DOE), received a grant from the DOE to support the EPN; and

**WHEREAS**, UW wishes to engage the San Antonio Police Department (SAPD) to provide certain police services on an overtime basis in support of the EPN; and

**WHEREAS**, UW will reimburse SAPD for the overtime costs SAPD incurs in providing these services in an amount not to exceed \$320,000.00; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager and her designee are hereby authorized to execute a contract with UW for certain police services by SAPD on an overtime basis in support of the EPN. The terms and conditions of the contract shall be substantially the same as those set out in the draft contract attached hereto as **Exhibit I**. Should the parties fail to execute a contract that contains substantially the same terms and conditions as those set out in the attached draft contract, further City Council authorization shall be required.

**SECTION 2.** Fund 26042000 (US Department of Education) is hereby designated for use in the accounting for the fiscal transaction in the acceptance of this agreement. The sum of up to \$320,000.00 from the DOE will be appropriated in said fund.

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

**SECTION 4.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED** this 14th day of February, 2013.



**M A Y O R**  
Julián Castro

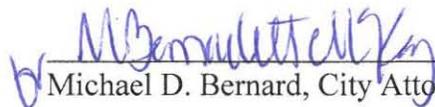
**ATTEST:**



---

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

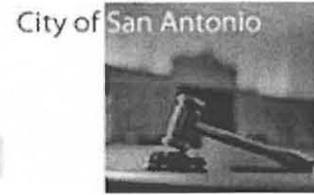


---

Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 15

<b>Name:</b>	6, 7, 9, 10, 11A, 12, 13, 14, 15						
<b>Date:</b>	02/14/2013						
<b>Time:</b>	10:01:08 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a contract with United Way of San Antonio and Bexar County for reimbursement of overtime expenses in an amount up to \$320,000.00 incurred by the San Antonio Police Department in support of the Eastside Promise Neighborhood Program. [Erik J. Walsh, Deputy City Manager; William P. McManus, Chief of Police]						
<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				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Leticia Ozuna	District 3		x			x	
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**PURCHASE OF SERVICE AGREEMENT  
BETWEEN  
CITY OF SAN ANTONIO  
AND  
UNITED WAY OF SAN ANTONIO AND BEXAR COUNTY/  
EASTSIDE PROMISE NEIGHBORHOOD**

This Purchase of Service (POS) POS Agreement is made and entered into by and between the City of San Antonio (CITY) and United Way of San Antonio and Bexar County (UW/EPN), acting as fiscal agent for the Eastside Promise Neighborhood (EPN), a grantee through the U.S. Department of Education (DOE), Fund for the Improvement of Education Award Number U215N110053, CFDA 84.215N, \_\_\_\_\_.

**WHEREAS**, UW/EPN has received a grant from the DOE to support the Eastside Promise Neighborhood (EPN); and

**WHEREAS**, UW/EPN wishes to engage CITY to provide certain police services in support of the EPN; **NOW THEREFORE:**

**I. TERM**

1.1 This POS Agreement shall commence upon the execution of this POS Agreement and shall terminate December 31, 2016, unless terminated earlier pursuant to the provisions hereof.

**II. SCOPE OF SERVICES**

**A. General**

- 2A.1 The definitions set out below shall be applicable to the provisions of the POS Agreement.
- a. "Additional Police Service" shall mean service provided by police officers, on an overtime basis, that is directed toward preventing, reducing, and deterring crime and includes, but is not limited to, targeted patrolling of safe corridors and deployment of resources to crime hot spots. Additional Police Service includes the services of a supervisor to coordinate the aforementioned services.

**B. Services**

- 2B.1 CITY agrees to provide Additional Police Service to UW/EPN during the term of this POS Agreement in support of the EPN.

- 2B.2 CITY and UW/EPN will consult to determine the specific Additional Police Services to be provided.
- 2B.3 The CITY acknowledges that the Additional Police Service is being added through the funding provided by the aforementioned grant and that the purpose of the grant and this POS Agreement is to support the EPN.
- 2B.4 Notwithstanding anything to the contrary, Additional Police Service is to be provided in accordance with the direction and control of CITY and its ordinances, rules, and regulations. UW/EPN shall have the right to consult with and provide comments to CITY, but shall not have the right or the responsibility to control or direct the Additional Police Service in any manner.

### **III. POS AGREEMENT BILLING**

- 3.1 In consideration of CITY's performance in a satisfactory and efficient manner of the services and activities set forth in this POS Agreement, UW/EPN agrees to reimburse CITY the overtime pay for each hour the officer actually performing the Additional Police Service is entitled to pursuant to the provisions of the collective bargaining agreement between the CITY and the San Antonio Police Officers' Association in effect at the time the services are provided, plus 1.45 percent of that amount to account for CITY's Medicare match for the overtime pay to each officer.
- 3.2 UW/EPN agrees that should it be determined by the DOE that the aforementioned grant permits the expenditure of grant funds for it, UW/EPN shall reasonably compensate CITY for the use of the CITY vehicles used to provide Additional Police Services pursuant to this POS Agreement. The parties shall execute an amendment to this POS Agreement providing for said compensation.
- 3.3 Notwithstanding any other provision of this POS Agreement, the total of all payments and other obligations made and incurred by UW/EPN hereunder shall not exceed \$320,000.00, and this POS Agreement shall terminate at the time UW/EPN has expended that amount pursuant to the terms of this POS Agreement.
- 3.4 Each month, but no later than the twenty-fifth day of the month, beginning with the month following the month in which CITY begins providing Additional Police Services pursuant to this POS Agreement, CITY shall submit a bill to UW/EPN in accordance with Article X. Regarding the final billing, however, CITY shall be permitted sixty days from the date of termination as set out herein to submit said billing.
- 3.5 Each billing submitted pursuant hereto shall reference this POS Agreement and shall contain the following information: (a) the names and ranks of the officers working; (b) the number of hours worked by each officer; (c) the billing rate per hour for each officer; and (d) a description of the services, which shall include the location of services, provided by each officer.

- 3.6 Within fifteen days of receipt of a billing submitted by CITY, UW/EPN agrees to pay CITY an amount equal to UW/EPN'S liabilities not previously billed to and subsequently paid by UW/EPN.

**IV. RESERVED**

**V. RESERVED**

**VI. RESERVED**

**VII. TERMINATION**

- 7.1 For purposes of this POS Agreement, "termination" of this POS Agreement shall mean termination by expiration of the POS Agreement term as set out in article I or earlier termination pursuant to any of the provisions of this POS Agreement.
- 7.2 CITY may terminate this POS Agreement in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to UW/EPN. Said notice shall specify the date of termination.
- 7.3 In no event shall CITY's action of terminating this POS Agreement 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 UW/EPN for any default hereunder or other action.
- 7.4 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 POS Agreement shall automatically terminate as of the effective date of such prohibition.

**VIII. NON-WAIVER**

- 8.1 Unless otherwise specifically provided for in this POS Agreement, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this POS Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this POS 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 POS Agreement shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

**IX. RESERVED**

**X. RESERVED**

**XI. RESERVED**

**XII. INDEMNITY**

**12.1 UW/EPN 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 UW/EPN'S ACTIVITIES UNDER THIS POS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF UW/EPN, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS, AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS POS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS, OR ITS EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT UW/EPN AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. UW/EPN SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR UW/EPN KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF UW/EPN'S ACTIVITIES UNDER THIS POS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT UW/EPN'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND**

**AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING UW/EPN OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**XIII. INSURANCE**

- 13.1 Prior to the commencement of any work under this POS Agreement, UW/EPN shall furnish copies of all required endorsements and completed certificates of insurance to CITY’s Police Department, which shall be clearly labeled “United Way/Eastside Promise Neighborhood” in the description of operations block of the certificate. The certificates shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept a memorandum of insurance or binder as proof of insurance. The certificates must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to CITY. CITY shall have no duty to pay or perform under this POS Agreement until such certificates and endorsements have been received and approved by CITY’s Police Department. No officer or employee, other than CITY’s Risk Manager, shall have authority to waive this requirement.
  
- 13.2 CITY reserves the right to review the insurance requirements of this article during the effective period of this POS Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this POS Agreement. In no instance will CITY allow modification whereby CITY may incur increased risk.
  
- 13.3 US’s financial integrity is of interest to CITY; therefore, subject to UW/EPN’s right to maintain reasonable deductibles in such amounts as are approved by the CITY, UW/EPN shall obtain and maintain in full force and effect for the duration of this POS Agreement, and any extension hereof, at UW/EPN’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the state of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPES	AMOUNTS
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000


- 13.4 UW/EPN agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of UW/EPN herein, and provide a certificate of insurance and endorsement that names UW/EPN and CITY as additional insureds. UW/EPN shall provide CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this POS Agreement. Such modifications may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the POS Agreement for all purposes.
- 13.5 As they apply to the limits required by CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration pages, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). UW/EPN 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 ten days of the requested change. UW/EPN shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn.: San Antonio Police Department  
P.O. Box 839966  
San Antonio, Texas 78283

- 13.6 UW/EPN agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions: (1) name CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies; (2) provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy; (3) workers' compensation, employers' liability, general liability, and automobile liability policies provide for a waiver of subrogation in favor of CITY; and (4) provide advance written notice directly to CITY of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten-calendar-days' advance notice for nonpayment of premium.
- 13.7 Within five calendar days of a suspension, cancellation, or non-renewal of coverage, UW/EPN shall provide a replacement certificate of insurance and applicable endorsements to CITY. CITY shall have the option to suspend UW/EPN's performance should there be a lapse in coverage at any time during this POS Agreement. Failure to

provide and to maintain the required insurance shall constitute a material breach of this POS Agreement.

- 13.8 In addition to any other remedies CITY may have upon UW/EPN's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order UW/EPN to stop work hereunder, and/or withhold any payments which become due to UW/EPN hereunder until UW/EPN demonstrates compliance with the requirements hereof.
- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which UW/EPN may be held responsible for payments of damages to persons or property resulting from UW/EPN's or its subcontractors' performance of the work covered under this POS Agreement.
- 13.10 It is agreed that UW/EPN's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this POS Agreement.
- 13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this POS Agreement and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- 13.12 UW/EPN and any subcontractors are responsible for all damage to their own equipment and/or property.

#### **XIV. CHANGES AND AMENDMENTS**

- 14.1 Except when the terms of this POS Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and UW/EPN.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this POS Agreement and that any such changes shall be automatically incorporated into this POS Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

#### **XV. ENTIRE POS AGREEMENT**

- 15.1 This POS Agreement and its exhibits constitute the final and entire POS 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 POS Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

#### **XVI. SEVERABILITY**

- 16.1 If any clause or provision of this POS Agreement is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the city of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this POS 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 POS Agreement that is invalid, illegal, or unenforceable, there be added as a part of the POS Agreement a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

### **XVII. NOTICES**

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

CITY

UW/EPN

Chief of Police  
San Antonio Police Department  
315 South Santa Rosa  
San Antonio, Texas 78207

Tony Leverett  
United Way of San Antonio and Bexar County  
700 South Alamo  
San Antonio, Texas 78205

### **XVIII. LAW APPLICABLE**

- 18.1 THIS POS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS POS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

### **XIX. LEGAL AUTHORITY**

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

### **XX. PARTIES BOUND**

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

**XXI. GENDER**

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

**XXII. CAPTIONS**

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

EXECUTED IN DUPLICATE ORIGINALS on \_\_\_\_\_, 2013.

CITY OF SAN ANTONIO

UNITED WAY  
OF SAN ANTONIO AND BEXAR COUNTY/  
EASTSIDE PROMISE NEIGHBORHOOD

\_\_\_\_\_  
Sheryl Sculley  
City Manager

\_\_\_\_\_  
Lyndon R. Herridge  
President/CEO

APPROVED AS TO FORM:

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