

City of San Antonio
Metropolitan Health District
332 W. Commerce, Suite 108
San Antonio, TX 78205

_____ Independent School District

San Antonio, TX 782__

Funding and Shared Use Agreement

This Funding and Shared Use Agreement (the “Agreement”) is entered into between the _____ Independent School District, which is an Independent School District organized under Education Code Chapter 11 (“DISTRICT”), and the City of San Antonio (“City”), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (“SAMHD”) (hereinafter collectively referred to as the “Parties”) pursuant to Ordinance No. 2011-__-__-_____, passed and approved on the __rd day of _____, 2011.

WHEREAS, in early 2010 the federal government awarded the City, on behalf of the SAMHD an American Reinvestment and Recovery Act - Communities Putting Prevention to Work (“ARRA-CPPW”) grant for \$15.6 millions in order to make policy, environmental, and systems changes to prevent obesity; and

WHEREAS, two of the broad goals of the ARRA-CPPW grant are to increase physical activity and to positively change social norms regarding physical activity, with specific strategies including encouraging property development and community programs which promote healthy eating habits, active living, active transport and increased recreational physical activity; and

WHEREAS, this agreement is intended to increase access to physical activity through the collaboration of the DISTRICT and the City to improve DISTRICT properties in ARRA-CPPW target zones for the use the general citizenry of the City of San Antonio; and

WHEREAS, the City Council finds that the improvements and renovation of DISTRICT properties that will then be made available to all the citizens of San Antonio is a public purpose that will benefit the health and welfare of the City of San Antonio; and

NOW THEREFORE, this Funding and Shared Use Agreement of the Parties delineates the responsibilities of each of the Parties:

I. PURPOSE

1.1 The Parties have determined that through their mutual collaboration DISTRICT will be provided funding for the planning, improvement, renovation and management of DISTRICT properties that will then be made available to all citizens of the City of San Antonio (the “Project”).

II. TERM

2.1 This agreement becomes effective immediately upon execution by DISTRICT and the City and will terminate on March 18, 2012

III. JOINT ACKNOWLEDGMENTS

3.1 The DISTRICT agrees and understands that the City expects to pay all obligations set out within this Agreement with funding from the 2009 American Recovery and Reinvestment Act ("ARRA"), U.S. Department of Health and Human Services ("HHS") and Centers for Disease Control and Prevention ("CDC"). Accordingly, 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 DISTRICT will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

IV. RESPONSIBILITIES OF THE CITY

4.1 In consideration of DISTRICT'S performance of all services and activities set forth in this Agreement, City agrees to reimburse DISTRICT for all Eligible Expenses (as defined in Section 7.01) for the Project incurred hereunder in an amount not to exceed _____ and NO/100THS (\$---,---.--).

4.2 City shall not be obligated nor liable under this Agreement to any party, other than DISTRICT, for payment of any monies or for the provision of any goods or services.

4.3 The City, through SAMHD staff will provide input and guidance regarding the planning, development and management of DISTRICT property designated for improvement or renovation in this Agreement.

V. RESPONSIBILITIES OF DISTRICT

5.1 DISTRICT, in accordance and compliance with the terms, provisions and requirements of this Agreement, and the Budget set out in Attachment I, shall enter into an agreement with one or more contractors for the following activities:

5.1.1 Planning, improvement, renovation and installation of infrastructure, as necessary, to meet the goals set out below:

5.1.1.1 *Property to be improved or renovated*

(A) *Plan and timeline for wrk*

5.2 DISTRICT agrees to use a process to select its contractor(s) that includes solicitation of multiple potential entities and selection is based on a reasonable evaluation of qualifications,

experience, price and the ability to meet the needs of DISTRICT and the provisions of this Agreement.

5.3 DISTRICT will secure all necessary permits and approvals prior to the start of the Project, including but not limited to, all City of San Antonio permits and approval of the Project by SAMHD.

5.4 DISTRICT's agreements with its contractor(s) and any change orders will be subject to the review and approval of City.

5.5 DISTRICT will manage the improvement of each of the properties identified above and further agrees to maintain all identified properties for the purposes made possible as a result of this agreement, to wit, maintain improved or renovated properties to be both aesthetically pleasing and safe for all users.

5.6 DISTRICT shall submit reports and tracking records to SAMHD on a monthly basis. Reports will be due on the first day of each month, with a final summary report being due within fifteen (15) days of the project completion.

5.7 DISTRICT agrees that its staff and participants will provide feedback regarding the implementation of the funding agreement and behavior outcomes for residents regarding the improved or renovated properties. The evaluation may consist of in-person and telephone questionnaires and focus groups involving participants and DISTRICT staff.

5.8 DISTRICT agrees and understands that all improvements and renovations are the responsibility of DISTRICT and its selected contractors. All security and liability for the designated DISTRICT properties shall be, and continue to be, the sole responsibility of DISTRICT.

5.9 DISTRICT agrees that the properties developed under this Agreement will be operational and open to the public, subject to agreed upon criteria, for the duration of this agreement.

VI. REQUESTS FOR and RETENTION of RECORDS

6.1 DISTRICT 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 (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 DISTRICT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided

hereunder, DISTRICT shall retain the records until the resolution of such litigation or other such questions. DISTRICT acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require DISTRICT to return said documents to City prior to or at the conclusion of said retention.

6.3 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 DISTRICT receives inquiries regarding documents within its possession pursuant to this Agreement, DISTRICT 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 DISTRICT shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of DISTRICT's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

VII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY

7.1 DISTRICT may use the funds provided under the terms of this Agreement for costs directly associated with the Project as may be approved by the City ("Eligible Expenses"). Expenditures of the funds by DISTRICT provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 DISTRICT further represents and warrants that as of the date hereof:

8.1.1 All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

8.1.2 It is financially stable and capable of fulfilling its obligations under this Agreement and that DISTRICT shall provide City immediate written notice of any adverse material change in the financial condition of DISTRICT that may materially and adversely effect its obligations hereunder.

8.1.3 None of the provisions contained herein contravene or in any way conflict with the authority under which DISTRICT is doing business or with the provisions of any existing indenture or agreement of DISTRICT.

IX. TERMINATION

9.1 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.

9.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with Article X - Notice.

9.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article X - Notice, 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:

9.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval by the City.

9.4 Defaults With Opportunity for Cure. Should the DISTRICT default in the performance of this Agreement in a manner stated in this section 9.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. The DISTRICT shall have ten (10) calendar days after receipt of the written notice, in accordance with Article X - Notice, to cure such default. If the DISTRICT fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, 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 DISTRICT'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.

9.4.1 Bankruptcy or selling substantially all of company's assets

9.4.2 Failing to perform or failing to comply with any covenant herein required

9.4.3 Performing unsatisfactorily

9.5 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.

9.6 Regardless of how this Agreement is terminated, DISTRICT shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by

DISTRICT, or provided to DISTRICT, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by DISTRICT in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at DISTRICT's sole cost and expense. Payment of compensation due or to become due to DISTRICT is conditioned upon delivery of all such documents, if requested.

9.7 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, DISTRICT shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by DISTRICT to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a **Waiver** by DISTRICT of any and all right or claims to collect moneys that DISTRICT may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

9.9 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 DISTRICT for any default hereunder or other action.

X. NOTICE

10.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:

Director
SAMHD
332 W. Commerce, Suite 307
San Antonio, TX 78205

If to the DISTRICT:

_____ ISD

San Antonio, TX 782

XI. TERMS AND CONDITIONS RELATED TO ARRA (STIMULUS) FUNDS

11.1 The DISTRICT acknowledges that Equipment provided under this Agreement was made possible by funds from the 2009 American Recovery and Reinvestment Act. As such, the DISTRICT agrees to comply with all terms and conditions, as applicable, associated with said funds as directed by the City or as required in this Agreement, including but not limited to:

- a) The American Recovery and Reinvestment Act (ARRA);

- b) 2 C.F.R. 176.210 *et seq.*;
- c) The terms and conditions of ARRA/CPPW Grant Number 1U58DP002453-01 as set out in an award letter to CITY (attached hereto, and incorporated herein, as Attachment II), as well as relevant ARRA information memorandum and publications issued by the federal government;
- d) The following Department of Management and Budget (OMB) Circulars, as applicable to the funds received by the DEPARTMENT hereunder:
 - i. OMB Circular A-102, entitled, “Grants and Cooperative Agreements with State and Local Governments”;
 - ii. OMB Circular A-110, entitled, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations”;
 - iii. OMB Circular A-133, entitled, “Audits of States, Local Governments, and Not for Profit Organizations”.

**XII. ADMINISTRATION OF AGREEMENT
and RESTRICTIONS ON USE OF FUNDS**

12.1 The DISTRICT agrees to comply with all the terms and conditions that the City must comply with in its award document from CDC/HHS. A copy of said award document is attached hereto and incorporated herein for all purposes as Attachment II. From time to time, the award document may be amended or supplemented, and these shall be incorporated into the Agreement collectively as Attachment II.

12.2 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 Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of the SAMHD, as representatives of the City and the parties ultimately responsible for all matters of compliance with CDC/HHS/ARRA and City rules and regulations, shall have the final authority to render or secure an interpretation.

12.3 Within a period not to exceed sixty (60) calendar days after the expiration, or early termination, date of the Agreement, DISTRICT shall submit all required deliverables to City. DISTRICT understands and agrees that in conjunction with the submission of the final report, the DISTRICT shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

12.4 DISTRICT shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant 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. Notwithstanding the foregoing, DISTRICT shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, DISTRICT agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

12.5 DISTRICT shall make available to City, CDC, HHS, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to DISTRICT's facility and to DISTRICT's personnel for the purpose of interview and discussion related to such documents. DISTRICT shall, upon request, transfer certain records to the custody of City, CDC or HHS when City, CDC or HHS determines that the records possess long-term retention value.

12.6 The SAMHD is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, DISTRICT agrees to permit City and/or HHS to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess DISTRICT's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by the SAMHD, the DISTRICT shall furnish to the SAMHD and the Grantor of the Grant Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by the SAMHD and shall 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 Agreement. DISTRICT agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contactor of any liability to the City for failure to comply with the Terms of the Grant or the terms of this Agreement.

12.7 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with this Agreement and Project goals and objectives. City reserves the right to make unannounced visits to DISTRICT, or DISTRICT subcontractor, sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

12.8 City agrees that it will present the findings of any such review to the DISTRICT in a timely manner and will attempt to convey information of Program strengths and weaknesses and assist with Program improvement.

12.9 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by the SAMHD shall be submitted by DISTRICT to City within five (5) working days of the request. The parties agree that a shorter time frame may

be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. In the event that DISTRICT 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 DISTRICT until such reports are delivered to City. Furthermore, the DISTRICT ensures that all information contained in all required reports or information submitted to City is accurate.

12.10 Unless disclosure is authorized by the City, DISTRICT agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the “Confidential Information”) and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. DISTRICT 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, DISTRICT shall give the Director of the SAMHD prior written notice that such disclosure is required with a full and complete description regarding such requirement. DISTRICT shall establish specific procedures designed to meet the obligations of this Article, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with DISTRICT’s employees and subcontractors prior to any disclosure of the Confidential Information. This Article shall not be construed to limit HHS’s, the CDC’s or the City’s or its authorized representatives’ right to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, DISTRICT shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

12.11 DISTRICT will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with ARRA-CPPW grant funds that either (i) has an purchase price of \$5,000.00 or greater; or (ii) meets such other criteria as City may prescribe, and consistent with those requirements set out in Attachment III. Upon request, DISTRICT will provide City a status report of the current inventory of equipment and supplies meeting these requirements. City shall have the right to review and approve DISTRICT's inventory tracking system.

XIII. INSURANCE

13.1 A) Prior to the commencement of any work under this Agreement, DISTRICT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Health Department, which shall be clearly labeled “*ARRA-CPPW Shared Use Project*” in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The

certificate(s) 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 the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Health Department. No officer or employee, 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 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 Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) DISTRICT’s financial integrity is of interest to the City; therefore, subject to DISTRICT’s right to maintain reasonable deductibles in such amounts as are approved by the City, DISTRICT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at DISTRICT’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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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
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

D) DISTRICT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of DISTRICT herein, and provide a certificate of insurance and endorsement that names the DISTRICT and the CITY as additional insureds. Respondent shall provide the 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 agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, 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). DISTRICT 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. DISTRICT shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Health Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) DISTRICT 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;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide 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.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, DISTRICT shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend DISTRICT'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 Agreement.

H) .In addition to any other remedies the City may have upon DISTRICT'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 DISTRICT to stop work hereunder, and/or

withhold any payment(s) which become due to DISTRICT hereunder until DISTRICT demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which DISTRICT may be held responsible for payments of damages to persons or property resulting from DISTRICT's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that DISTRICT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) DISTRICT and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNIFICATION

(If an Independent School District the following will apply)

14.1 DISTRICT 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, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. DISTRICT and City shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

(If an entity other than an Independent School District the following will apply)

14.1 DISTRICT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually or 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 DISTRICT's activities under this Agreement, including any acts or omissions of DISTRICT, any agent, officer, director, representative, employee, consultant or subcontractor of DISTRICT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. 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 DISTRICT 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.

14.2 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.

14.3 DISTRICT shall promptly advise the City in writing of any claim or demand against the City or DISTRICT known to DISTRICT related to or arising out of DISTRICT's activities under this Agreement.

14.4 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. DISTRICT shall advise the City in writing within 24 hours of any claim or demand against the City or DISTRICT known to DISTRICT related to or arising out of DISTRICT's activities under this Contract and shall see to the investigation and defense of such claim or demand at DISTRICT's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving DISTRICT of any of its obligations under this paragraph.

14.5 Defense Counsel - DISTRICT shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If DISTRICT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and DISTRICT shall reimburse City for all costs related to retaining defense counsel until such time as DISTRICT retains Counsel as required by this section.. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

14.6 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of DISTRICT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for DISTRICT or any subcontractor under worker's compensation or other employee benefit acts.

XV. APPLICABLE LAW

15.1 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.

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

XVI. AMENDMENTS

16.1 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 both City and DISTRICT. The Director of the SAMHD may execute contract amendments on behalf of City in the following circumstances a) budget adjustments authorized by the funding agency so long as the total dollar amount of the budget remains unchanged, b) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

XVII. SEVERABILITY

17.1 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 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 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.

XVIII. LEGAL AUTHORITY

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

----- INTENTIONALLY LEFT BLANK -----

XIX. ENTIRE AGREEMENT

19.1 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 XIV. This Agreement shall supersede any and all prior written and oral agreements between the City and DISTRICT.

CITY

City of San Antonio

Date

Date

APPROVED AS TO FORM:

City Attorney