

AN ORDINANCE 2008-06-19-0596

**ADOPTING THE PUBLIC SERVICE PORTION OF THE 34<sup>TH</sup> YEAR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) IN THE AMOUNT OF \$2,157,872.00 AS CONTAINED IN THE FY 2008-2009 CONSOLIDATED PLAN ANNUAL BUDGET; AUTHORIZING THE PUBLIC SERVICE PORTION OF THE 34<sup>TH</sup> FISCAL YEAR CDBG PROGRAM; AND AUTHORIZING THE SUBMISSION OF THE PUBLIC SERVICE PORTION OF THE CDBG GRANT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) FOR THE FY 2008-2009 CONSOLIDATED PLAN ANNUAL BUDGET, CERTIFICATION AND OTHER INFORMATION AS REQUIRED TO HUD.**

\* \* \* \* \*

**WHEREAS**, the U.S. Department of Housing and Urban Development (HUD), pursuant to the Housing and Community Development Act of 1974, as amended (Public Law 93-383), provides cities with annual grant support to enable the rehabilitation and economic development of their urban communities so as to improve conditions for low and moderate income citizens; and

**WHEREAS**, the City of San Antonio, through its Community Development Block Grant (CDBG) Program, has administered CDBG Grant funds annually beginning with fiscal year 1974-1975 (Year 1), and continuing through fiscal year 2007-2008 (Year 33); and

**WHEREAS**, pending completion of all required administrative procedures required for official HUD release of funds, fiscal year 2008-2009 CDBG Entitlement public service funds in the amount of \$2,157,872.00 will become available to the City on October 1, 2008; and

**WHEREAS**, as required by federal regulation, the Fiscal Year 2008-2009 Consolidated Plan Annual Budget was prepared, encompassing grant funds of the 34<sup>th</sup> Year CDBG, 17<sup>th</sup> Year HOME Partnership Entitlement Grant (HOME), 14<sup>th</sup> Year Emergency Shelter Grant (ESG), and the 14<sup>th</sup> Year Housing Opportunities for Persons with AIDS Grant (HOPWA); and

**WHEREAS**, citizen recommendations regarding the allocation of the aforesated grant funds have heretofore been received at neighborhood and city-wide meetings and at public hearings, notices of which were duly posted; and

**WHEREAS**, pursuant to applicable HUD regulations designed to ensure adequate citizen input, a public hearing is required in this instance; and

**WHEREAS**, the required notice having been duly published, and said public hearing having been held before City Council on June 5, 2008, it is now the desire of the City, having considered the aforesaid citizen recommendations, to approve the public service portion of the CDBG Budget as part of the Fiscal Year 2008-2009 Consolidated Plan Annual Budget and to fund the 34<sup>th</sup> Year CDBG Program for public service on the City's books; **NOW THEREFORE**:

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

**SECTION 1.** The public service portion of the Community Development Block Grant (CDBG) Program Budget of the Fiscal Year 2008-2009 Consolidated Plan Annual Budget is hereby approved and adopted as set forth therein, copies of which are affixed hereto and incorporated by reference herein as Attachment I.

**SECTION 2.** The public service portion of the Thirty-fourth (34<sup>th</sup>) Year Community Development Block Grant (CDBG) Program beginning October 1, 2008 and terminating September 30, 2009 is hereby authorized.

**SECTION 3.** Subject to and upon award, Fund Number 28034000 entitled "Community Development Block Grant Thirty-fourth Year" is hereby designated for use in accounting for the above grant and the total sum of \$2,157,872.00 is hereby appropriated in said fund for allocation to public service projects as set out in the proposed budget affixed hereto and incorporated herein for all purposes as Attachment I.

**SECTION 4.** A Deputy City Manager, all Assistant City Managers, Assistants to the City Manager, and the Director of the Department of Grants Monitoring and Administration are hereby designated and authorized as representatives of the City Manager for the purpose of the public service portion of the CDBG program administration and communication with the U.S. Department of Housing and Urban Development (HUD).

**SECTION 5.** The City Manager, or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director the Department of Grants Monitoring and Administration is hereby authorized to submit to HUD those documents set forth herein as Attachment I, with certifications, as well as such other information as required by HUD for award of the aforesaid entitlement funds.

**SECTION 6.** Subject to and upon award of the aforesaid grant funds for public service, the City Manager, or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of the Department of Grants Monitoring and Administration is hereby authorized to accept same and to execute any and all documents required by HUD in connection therewith.

**SECTION 7.** The City Manager, or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of the Department of Grants Monitoring and Administration is hereby directed to monitor all CDBG-funded public service project activities so as to assure compliance with goals and objectives adopted by City Council; substantial fiscal or programmatic changes thereto shall in all cases be approved by the City Council.

**SECTION 8.** The City Manager, or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager, the Director of the Department of Grants Monitoring and Administration or the Director of the Department of Community Initiatives is hereby authorized and directed to carry out the administration of the public service portion of the 34<sup>th</sup> Year CDBG Program. Such administration shall include, but not be limited to, the execution of any and all contracts and other documents necessary in connection with the public service portion of the 34<sup>th</sup> Year CDBG Program, an example of which are affixed hereto and incorporated herein for all purposes as Attachment II, and the reaffirmation of any and all assurances required of the City by HUD.

**SECTION 9.** The Director of the Department of Grants Monitoring and Administration or the Director of the Department of Community Initiatives is hereby authorized to execute any and all agreements with delegate agencies and/or City departments for each project delineated in Attachment I. Delegate Agency contracts and interdepartmental agreements are hereby required to contain acceptable detailed performance indicators for each project and the information for such contracts and agreements must be finalized on or before November 1, 2008 in order to facilitate their execution. The Directors of the Department of Grants Monitoring and Administration and Finance Departments are hereby authorized and directed to automatically cancel and move the full budget allocation provided to any project, including City Administration project allocations, for which acceptable performance indicators are not provided, or for which information for contract/interdepartmental agreement execution has not been received by the appropriate City department by November 1, 2008, to the CDBG Contingency Account in preparation for timely reprogramming to other eligible activities. Additionally, the Director of the Department of Grants Monitoring and Administration is hereby authorized to cancel any project activity set-up in the HUD IDIS system for which no activity is evidenced for a forty-five (45) day period.

**SECTION 10.** The Director of the Department of Grants Monitoring and Administration is hereby authorized to cancel and reprogram any and all budget allocations provided to any project, in the event any delegate agency contract and/or interdepartmental agreement is not executed by January 1, 2009.

**SECTION 11.** All public service projects in CDBG Entitlement Program funds for the 33<sup>rd</sup> Year with completed scopes of work are hereby closed and unexpended grant monies and program income in said funds are hereby authorized to be placed in the contingency fund in preparation for future reprogramming in compliance with City policies and HUD regulations.

**SECTION 12.** The Grants Monitoring and Administration Department Director is hereby designated the Program Manager for the CDBG Program. Further program responsibilities shall be as follows:

- (a) The Department of Grants Monitoring and Administration shall administer and monitor all public service CDBG programs and fiscal activities and requests;
- (b) The Human Resources Department shall monitor all projects and sub-agencies as necessary for compliance with all equal employment opportunity rules, regulations, policies and laws;

- (c) The Department of Economic Development shall monitor all projects and sub-agencies as necessary for compliance with local, state, and federal MBE-WBE rules, regulations, policies, and laws;
- (d) The Community Initiatives Department shall monitor, where applicable, fair housing compliance and shall administer the handling and resolution of complaints related thereto;
- (e) The Department of Public Works shall monitor flood insurance and floodplain management compliance, shall conduct pre-construction conferences, and shall monitor Davis-Bacon compliance for all CDBG capital improvement projects;
- (f) The Office of the City Auditor shall accomplish fiscal and program compliance audits of the delegate agencies in the CDBG program in compliance with OMB A-133, and in coordination with the City's annual independent audit; and
- (g) The City Attorney's Office shall provide legal services including, but not limited to, contract and loan development and review and the preparation of legal opinions to resolve questions of regulatory application associated with the development and administration of HUD programs administered by the City's Department of Grants Monitoring and Administration.

**SECTION 13.** The personnel classifications and pay ranges set forth in Attachment III affixed hereto and incorporated herein for all purposes are hereby authorized for carrying out aspects of the approved public service portion of the 34<sup>th</sup> Year CDBG Program.

**SECTION 14.** The Finance Department is hereby authorized and directed in its payments to other agencies to follow drawdown procedures established by both the City of San Antonio and HUD whereby CDBG funds shall be drawn down prior to other funds in the case of multi-funded projects where not in conflict with other federal requirements. The Finance Department is further directed to ensure that prior to processing any and all fiscal requests related to Fund 28034000 CDBG accounts, each such request has received prior compliance review and approval by the Director of Grants Monitoring and Administration or his designated representative, and that such review and approval is indicated by their signatures or initials affixed to the fiscal request.

**SECTION 15.** The City Manager, or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of Grants Monitoring and Administration is hereby authorized to approve budget adjustments within project allocations to conform with actual expenditures if line item cost overruns occur or are anticipated.

**SECTION 16.** The City Manager, or in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of Grants Monitoring and Administration is hereby authorized to complete all documents required by HUD to officially close projects and program financial records following completion of the contracted scope-of-work.

**SECTION 17.** 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, SAP GL Account Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 18.** This ordinance shall be effective on and after the 29<sup>th</sup> day of June, 2008.

PASSED AND APPROVED this 19<sup>th</sup> day of June, 2008



M A Y O R

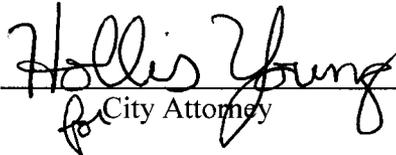
**PHIL HARDBERGER**

ATTEST:



City Clerk

APPROVED AS TO FORM



for City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



**Agenda Voting Results - 56A**

<b>Name:</b>	9, 16, 17, 18, 19, 21, 24, 25, 26, 27, 31, 32, 33, 34, 41, 42, 43, 44, 45, 46, 48, 49, 50, 52, 55, 56A, 56B, 57, 58, 59, 61, 62, 66, 68, 69, 70, 72, 73, 75, 76, 78, 80, 81A, 81B, 81C, 81D, 81E, 81F, 81G, 81H, 81I, 81J
<b>Date:</b>	06/19/2008
<b>Time:</b>	02:48:38 PM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance adopting the Public Service portion of the 34th Year Community Development Block Grant (CDBG) in the amount of \$2,157,872.00 as contained in the FY 2008-2009 Consolidated Plan Annual Budget; authorizing the Public Service portion of the 34th fiscal year CDBG program; and authorizing the submission of the Public Service portion of the CDBG Grant to the U.S. Department of Housing and Urban Development (HUD) for FY 2008-2009 Consolidated Plan Annual Budget, certification and other information as required to HUD.
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					

# ATTACHMENT I

City of San Antonio  
 FY 2008-2009 CDBG Public Service Appropriations  
 June 19, 2008

Agency Name	Program Name	CDBG
<b>Senior Services</b>		
YWCA of SA	Senior Connection	83,000.00
El Centro del Barrio dba Centro Med	Activity Center for the Frail & Elderly	120,000.00
Catholic Charities	Foster Grandparent Program	36,749.00
San Antonio Food Bank	Food Security Initiative	330,000.00
San Antonio OASIS	OASIS	35,000.00
Family Services Association of San Antonio Inc	Senior Enrichment Services	73,853.00
Project MEND	Durable Medical Equipment Program	90,000.00
Support Lending for Emotional Well Being Inc	Emerg Assist for Low Inc Disabled Women w/ Cancer	100,000.00
Catholic Charities	Retired & Senior Volunteer Program	72,184.00
Antioch Community Transformation Network	Senior Fitness & Activity Program	51,816.00
Christian Senior Services	Senior Companion Program	50,000.00
<b>Total Senior Services</b>		<b>\$1,042,602.00</b>
<b>Basic Needs</b>		
San Antonio Aids Foundation	Cong Hot Meals Dining for People with HIV/AIDS	74,293.00
Any Baby Can of SA	Prescription Assistance Program	60,582.00
St. Peter - St. Joseph Children's Home	Project Ayuda	67,900.00
Any Baby Can of SA	Case Management	73,428.00
San Antonio Urban Ministries	Fairweather Lodge	30,000.00
YWCA of SA	Self-Employment for Economic Development (SEED)	30,000.00
Hispanic Religious Partnership for Comm Health Inc	Hunger Relief	62,754.00
San Antonio Food Bank	Food Security Initiative	70,000.00
<b>Total Basic Needs</b>		<b>\$568,957.00</b>
<b>Homeless Services</b>		
Corazon Ministries Inc	Basic Services: Food Security	39,473.00
<b>Total Homeless Services</b>		<b>\$39,473.00</b>
<b>Other Agencies</b>		
COSA-Parks & Recreation Dept	Teen Connection	38,127.00
COSA-Parks & Recreation Dept	Summer Outdoor Pool	76,557.00
COSA-Parks & Recreation Dept	Roving Leader Program	161,655.00
COSA-Parks & Recreation Dept	Comm. Ctr. Summer Ext. Hours	72,640.00
COSA-Housing & Neighborhood Services	Code Compliance	157,861.00
<b>Total Other Agencies</b>		<b>\$506,840.00</b>
<b>Total Community Safety Net</b>		<b>\$2,157,872.00</b>

# ATTACHMENT II

STATE OF TEXAS \* DELEGATE AGENCY CONTRACT

COUNTY OF BEXAR \* WITH

CITY OF SAN ANTONIO \* (Name of Contractor)

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its Grants Monitoring and Administration Department pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_ and \_\_\_\_\_ (hereinafter referred to as "Contractor").

## WITNESSETH:

**WHEREAS**, the Grants Monitoring and Administration Department is designated as the managing City department (hereinafter referred to as "Managing City Department") for the City; and

**WHEREAS**, the City has provided certain funds from the City of San Antonio General Fund (hereinafter referred to as "General Fund") for human development services; and

**WHEREAS**, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of \_\_\_\_\_ and \_\_\_\_\_ /100 Dollars (\$ \_\_\_\_\_) in funds for a project entitled, " \_\_\_\_\_ " (hereinafter referred to as the "Project" or "Program"); and

**WHEREAS**, the City wishes to engage the Contractor to carry out the Project; **NOW THEREFORE:**

The parties hereto agree as follows:

### I. SCOPE OF WORK

1.1 The Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Scope of Work, affixed hereto and incorporated herein for all purposes as Attachment I.

### II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin immediately and shall terminate on the early of a) \_\_\_\_\_, or b) project completion.

2.2 The City shall have the option to renew this Contract for an additional period not to exceed one (1) year, subject to (a) the City's receipt of additional monies sufficient to fund the renewal term; (b) the Contractor satisfactorily meeting the performance requirements of this Contract, as solely determined by the City; and (c) the prior approval by the City Council of San Antonio of such Contract renewal, as evidenced by an ordinance duly passed and approved.

### III. CONSIDERATION

3.1 In consideration, the City will reimburse Contractor for costs incurred in accordance with the budget approved by City Council of San Antonio in Ordinance No. \_\_\_\_\_. Said budget is affixed hereto and incorporated herein for all purposes as Attachment II. It is specifically agreed that reimbursement hereunder shall not exceed the total amount of \$ \_\_\_\_\_.

3.2 The funding level of this Contract is based on an allocation from the following funding sources:

\$ — General Fund

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

#### IV. PAYMENT

4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, including but not limited to those laws referenced in Section XII hereof, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in Attachment II of this Contract. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract.

4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request. The Director of the Managing City Department may, in his sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:

(A) Advance payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that a check is available from the City.

(B) The Contractor must deposit City funds in a separate account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited in such separate account, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that causes the Contractor's account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.

4.3 Contractor agrees that reimbursements of eligible expenses shall be made monthly or bi-weekly, as determined by the Director of the Managing City Department according to standard procedures followed by the City's Finance Department.

4.4 Contractor agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Managing City Department.

4.5 The Contractor shall submit to City all final requests for payment no later than forty-five (45) days from the termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such forty-five (45) day period allowing Contractor to submit a request for payment after such forty-five (45) day period.

- 4.6 Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor).
- 4.7 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
- (A) Accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
  - (B) Identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, unobligated balances, assets, equity, outlays, and income;
  - (C) Effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain an accounting system that can separate funds by funding source and project;
  - (D) Comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
  - (E) Procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
  - (F) Procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;
  - (G) Supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
  - (H) An accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.
- 4.8 Contractor agrees that Contractor costs or earnings claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.9 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project or projects funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included in the financial statements that are applicable to the Contractor's Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.
- 4.10 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to the City.

- 4.11 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

## **V. PROGRAM INCOME**

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

## **VI. ADMINISTRATION OF CONTRACT**

- 6.1 This section intentionally left blank.
- 6.2 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of the City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.
- 6.3 Contractor shall not use funds awarded from this Contract as matching funds for any Federal, State or local grant without the prior written approval of the Director of the Managing City Department.
- 6.4 The City shall have the authority during normal business hours to make physical inspections to the operating facility occupied to administer this Contract and to require such physical safeguarding devices as locks, alarms,

security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

- 6.5 The Contractor Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.
- 6.6 Contractor agrees to comply with the following check writing and handling procedures:
- (A) No blank checks are to be signed in advance;
  - (B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed \$200.00 per location for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.
  - (C) Checks issued by City to Contractor shall be deposited into the appropriate bank account immediately or by the next business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 6.7 City reserves the right to request Contractor to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.

## VII. AUDIT

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

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within a period of ten (10) days upon the Contractor's receipt of the report.

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

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

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

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

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

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

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

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

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

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

### **VIII. RECORDS, REPORTING, AND COPYRIGHTS**

- 8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, all policies and procedures, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 The Contractor shall submit to the Managing City Department such reports as may be required by the City, including the Contract Monitoring Report, which is affixed hereto and incorporated herein as Attachment IV. The Contract Monitoring Report is to be submitted by the Contractor no later than the fifth (5<sup>th</sup>) business day of each month. The Contractor ensures that all information contained in all required reports submitted to City is accurate.
- 8.3 Contractor agrees to maintain in confidence all information pertaining to the Project/Projects or other information and materials prepared for, provided by, or obtained from City including, without limitation, 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 Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon termination of this Contract, Contractor shall return to City all copies of materials related to the Project/Projects, including the Confidential Information.
- 8.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 8.5 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.

- 8.6 Ownership of Intellectual Property. Contractor and City agree that the Project/Projects shall be and remain the sole and exclusive proprietary property of City. The Project/Projects shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project/Projects and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project/Projects and the tangible and intangible property rights relating to or arising out of the Project/Projects, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project/Projects shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project/Projects, including without limitation, any letters patent, copyright, or other protection relating to the Project/Projects, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.
- 8.7 Within a period not to exceed forty-five (45) days from the termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.
- 8.8 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions. Information required for submission shall include but may not be limited to:
- (A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
  - (B) Current Bylaws and Charter;
  - (C) Terms of Officers;
  - (D) Amendments to Bylaws;
  - (E) Schedule of anticipated board meetings for current Fiscal Year;
  - (F) Minutes of board meetings that are approved by the Contractor's board will become part of the Contractor's project records and as such, must be available to City staff, upon request, provided however, the Contractors shall submit to the City minutes of board meetings that are approved by the Contractor's Board on a quarterly basis for contracts with the City that are in an amount of \$1,000,000.00 or greater;
  - (G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

8.9 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in section 12.3 of this Contract.

**IX. INSURANCE**

9.1 Contractor agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this CONTRACT, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY’s Department of Grants Monitoring and Administration Department, which shall be clearly labeled “2007-2008 AGA Plaza General Fund” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and 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 CONTRACT until such certificate and endorsements have been received and approved by the CITY’s Department of Grants Monitoring and Administration. 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 CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- (C) A Contractor’s financial integrity is of interest to the CITY; therefore, subject to Contractor’s right to maintain reasonable deductibles in such amounts as are approved by the CITY, Contractor shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at Contractor’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>POLICY TYPES*</u>	<u>AMOUNTS</u>
1. Workers Compensation Employers’ Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations * b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for bodily Injury and Property Damage of \$1,000,000 per occurrence
* If Applicable as determined by the City's Risk Manager	

(D) The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within ten (10) days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Department of Grants Monitoring and Administration  
P.O. Box 839966  
San Antonio, Texas 78283-3966

(E) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- Name the CITY and 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; and
- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

(F) Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this CONTRACT. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.

- (G) If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- (H) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this CONTRACT.
- (I) It is agreed that Contractor's insurance shall be deemed primary 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 CONTRACT.
- (J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT.

#### X. INDEMNITY

#### 10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

- (A) Contractor 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 Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT.** 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. Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation of and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.

- (B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article is an INDEMNITY extended by Contractor to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the City's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. Contractor further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

## XI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

11.1 CITY's SBEDA, Non-Discrimination and Affirmative Action Policies. SUB-GRANTEE agrees and acknowledges that it is CITY's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). SUB-GRANTEE agrees that SUB-GRANTEE will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. SUB-GRANTEE further agrees that SUB-GRANTEE will abide by all applicable terms and provisions of CITY's Non-Discrimination Policy, CITY's SBEDA Policy and CITY's Equal Opportunity Affirmative Action Policy, these policies being available in CITY's Department of Economic Development and the City Clerk's Office.

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

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

11.3 For this CONTRACT, the Parties agree that:

- (A) The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this CONTRACT by reference; and
- (B) The failure of CONTRACTOR or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this CONTRACT.
- (C) Failure of CONTRACTOR or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this CONTRACT.
- (D) During the Term of this CONTRACT, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONTRACTOR's SBEDA Plan (Attachment V) shall constitute a material breach of the SBEDA Program and this CONTRACT.
- (E) CONTRACTOR shall pay all suppliers and subcontractors identified in its SBEDA Plan (Attachment V) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONTRACTOR to the CITY Managing Department. Failure to pay SE's in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this CONTRACT.

11.4 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this CONTRACT:

- (A) Failure of CONTRACTOR to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this CONTRACT, or failing to allow such SE to perform a Commercially Useful Function; and
- (B) Modification or elimination by CONTRACTOR of all or a portion of the scope of work attributable to an SE upon which the CONTRACT was awarded; and
- (C) Termination by CONTRACTOR of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the CONTRACT without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; and
- (D) Participation by CONTRACTOR in a Conduit relationship with an SE scheduled to perform work that is the subject of this CONTRACT.

11.5 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this CONTRACT for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONTRACTOR materially breaches the requirements of the SBEDA Program:

- (A) Terminate this CONTRACT for default;
- (B) Suspend this CONTRACT for default;
- (C) Withhold all payments due to the CONTRACTOR under this CONTRACT until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

- (D) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the CONTRACT, or from any other amounts due to the CONTRACTOR under the CONTRACT.
- (E) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this CONTRACT.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

11.6 Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director responsible for the affected CONTRACT shall then make the decision as to what remedies will be exercised if the CONTRACT is valued at less than \$25,000. If the CONTRACT is valued at \$25,000 or greater, then the Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the CONTRACT. If the recommended remedy is to terminate the CONTRACT, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

11.7 Special Provisions for Extension of Contracts. In the event the CITY extends this CONTRACT without a competitive Bid process, the CITY Managing Department responsible for monitoring the CONTRACT shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (A) A SBEDA Utilization Goal for the extended period;
- (B) A modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONTRACTOR does not meet the SBEDA Utilization Goal; and
- (C) The required minimum Good Faith Efforts outreach attempts that CONTRACTOR shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the CONTRACT extension document. The CONTRACTOR entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
  - (1) Subject CONTRACTOR to any of the remedies listed above; and/or
  - (2) Result in rebid of the CONTRACT to be extended.

## XII. APPLICABLE LAWS

- 12.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by Federal, State, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable to the funds received by Contractor hereunder:
- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
  - (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
  - (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
  - (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
  - (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".
- 12.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules
  - Government Code Chapter 552 pertaining to Texas Public Information Act
  - Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
  - Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
  - Texas Local Government Code

In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

- 12.4 Contractor shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- (A) Title VII of the Civil Rights Act of 1964, as amended;
  - (B) Section 504 of the Rehabilitation Act of 1973, as amended;
  - (C) The Age Discrimination Act of 1975, as amended;

- (D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
- (E) Fair Labor Standards Act of 1938, as amended;
- (F) Equal Pay Act of 1963, P.L. 88-38; and
- (G) All applicable regulations implementing the above laws.

12.5 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to:

- (A) Worker's compensation;
- (B) Unemployment insurance;
- (C) Timely deposits of payroll deductions;
- (D) Filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
- (E) Occupational Safety and Health Act regulations; and
- (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.

12.6 Contractor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

12.7 Contractor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.

12.8 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. If using City of San Antonio General Funds, expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.

12.9 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T.

### **XIII. NO SOLICITATION/CONFLICT OF INTEREST**

13.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

- 13.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 13.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 13.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
  - (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 13.5 Contractor acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither the Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. If Contractor is a business entity, the Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XIV. TERMINATION**

- 14.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if the Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.
- 14.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. The Contractor shall also have the right to

terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.

- 14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.
- 14.4 Should the Contractor be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City's sole and absolute discretion, be grounds for termination for cause.

#### **XV. PROHIBITION OF POLITICAL ACTIVITIES**

- 15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 15.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 15.3 The prohibitions set forth in Article XV., sections 15.1 and 15.2 of this Contract include, but are not limited to, the following:
- (A) An activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
  - (B) Working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
  - (C) Coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
  - (D) Using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 15.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the Managing City Department. Contractor shall list the name and number of a contact

person from the Managing City Department on the statement that Contractor's personnel can call to report said violations.

- 15.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

## **XVI. PERSONNEL MANAGEMENT**

- 16.1 The Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 16.2 Contractor is permitted to pay its full time employees for the total number of holidays authorized by the City Council for City employees. If the Contractor elects to observe more than the total number of holidays authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.
- 16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment II) that affect a salary or range increase may not be changed without justification and prior written approval from the Director of the Managing City Department, as evidenced through a written amendment to this Contract approved by the Director of the Managing City Department.
- 16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.
- 16.5 The Contractor agrees to provide the City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 16.6 At the sole discretion of the Director of the Managing City Department, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:
- (A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;
  - (B) To serve as a juror;
  - (C) To attend the funeral of someone in the immediate family. Immediate family shall include father, mother, sister, brother, husband, wife or child, and other relatives, (including in-laws) if such other relatives are actually members of the employee's household. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or
  - (D) To attend seminars or workshops.
- 16.7 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

## **XVII. ADVERSARIAL PROCEEDINGS**

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

## **XVIII. CITY-SUPPORTED PROJECT**

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

## **XIX. EQUIPMENT**

- 19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at Contract's termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Contract. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.
- 19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.
- 19.3 Contractor shall maintain records on all items obtained with City funds to include:
- (A) A description of the equipment, including the model and serial number, if applicable;
  - (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
  - (C) An indication of whether the equipment is new or used;
  - (D) The vendor's name (or transferred from);
  - (E) The location of the property;
  - (F) The property number shown on the property tag; and
  - (G) A list of disposed items and disposition
- 19.4 The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72)

hours from the date that Contractor discovers the lost, stolen, missing, damaged and/or destroyed equipment/property. The report submitted by the Contractor to the Managing City Department shall minimally include:

- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.5 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.

19.6 The Contractor shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

#### **XX. TRAVEL**

20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present.

- (A) Contractor agrees that mileage reimbursement paid to Contractor's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with Internal Revenue Service (IRS) rules. Contractor further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by the City. Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.
- (B) Contractor agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Contract, Contractor shall 1) provide City with detailed documentation of such business travel expense(s), 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

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

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

#### **XXII. DEBARMENT**

22.1 This section intentionally left blank.

### **XXIII. ASSIGNMENT**

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

### **XXIV. AMENDMENT**

- 24.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing City Department shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws, and in the following circumstances:
- (A) An increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing Contract funding during the term of this Contract shall not exceed the foregoing amount;
  - (B) Modifications to the Scope of Work set forth in Attachment I hereto, so long as the terms of the amendment stay within the parameters set forth in the Project Description, also set forth in Attachment I hereto;
  - (C) Budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment II) of this Contract;
  - (D) Modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department.

### **XXV. SUBCONTRACTING**

- 25.1 This section intentionally left blank.
- 25.2 Contractor must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.
- 25.3 Any work or services for sub-contracting hereunder, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.
- 25.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

**XXVI. OFFICIAL COMMUNICATIONS**

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

City:

Director  
Department of Grants Monitoring and Administration  
1400 S. Flores, Unit 3  
San Antonio, Texas 78204

Contractor:

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

**XXVII. VENUE**

27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

**XXVIII. GENDER**

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

**XXIX. AUTHORITY**

29.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

**XXX. LICENSES AND TRAINING**

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

### **XXXI. INDEPENDENT CONTRACTOR**

- 31.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 31.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 31.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

### **XXXII. SEVERABILITY**

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

### **XXXIII. CONTRIBUTION PROHIBITIONS**

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

- 33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until thirty (30) Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 33.2 Contractor acknowledges that the City has identified this Contract as high risk.
- 33.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

**XXXIV. ENTIRE CONTRACT**

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

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

**CITY OF SAN ANTONIO:**

**CONTRACTING AGENCY:**

Department of Grants Monitoring and Administration

[Signature]

\_\_\_\_\_  
ANDREW W. CAMERON  
Director

\_\_\_\_\_  
[Signature]

**APPROVED AS TO FORM:**

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

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

**ATTACHMENTS:**

- Attachment I - Scope of Work
- Attachment II - Project Budget
- Attachment III - Funding Guide (to which the Federal Compliance Manual is attached as Attachment III-Exhibit "A")
- Attachment IV - Contract Monitoring Report
- Attachment V - SBDEA Plan

# ATTACHMENT III

## CDBG FUNDED PERSONNEL CLASSIFICATIONS & PAY RANGES

### MONITORING & OVERSIGHT *Housing & Community Development*

<u>Job Class</u>	<u>Job Title</u>	<u>#of Positions</u>	<u>Business Area</u>
0040	Administrative Assistant I	1	3100
0046	Management Analyst	9	3100
0156	Contract Coordinator	5	3100
0178	Contract Manager	1	3100
0826	Fiscal Planning Manger	1	3100
0909	Customer Services Representative	1	3100
0937	Community Development Coordinator	1	3100
1020	Grants Monitoring & Admin Director	1	3100
1076	Executive Secretary	1	3100
2063	Administrative Associate	1	3100

### HOUSING SERVICES ADMINISTRATION *Housing & Neighborhood Services*

0040	Administrative Assistant I	1	6100	
0041	Administrative Assistant II	2	6100	6100
0161	Sr. Planner	1	6100	
0555	Sr. Construction Inspector	1	6100	6100
0558	Construction Specialists I	6	6100	
0559	Construction Specialists II	2	6100	
0561	Construction Supervisor	4	6100	
0892	Fiscal Officer	1	6100	
0910	Sr. Customer Service Representative	3	6100	
0978	Housing Loan Officer	4	6100	
0979	Housing Loan Coordinator	1	6100	6100
2063	Administrative Associate	1	6100	

### CODE COMPLIANCE *Housing & Neighborhood Services*

0506	Code Enforcement Investigators	4	6100
0507	Code Compliance Supervisor	1	6100

### CDBG FAIR HOUSING ADMINISTRATION *Community Initiatives*

<u>Job Class</u>	<u>Job Title</u>	<u>#of Positions</u>	<u>Business Area</u>
0017	Secretary I	1	3800
0918	Program Manager	1	3800
0971	Community Services Specialist	2.5	3800

# ATTACHMENT III

## COMMUNITY DEVELOPMENT SERVICES

### *Planning & Community Development*

0125	Real Estate Specialist	1	5000
0146	Sr. GIS Analyst	1	5000
0870	Special Projects Coordinator	1	5000
0937	Community Development Coordinator	1	5000
1069	Assistant Planning Director	1	5000

## CDBG /HOME GRANTS ACCOUNTING

### *Finance*

0927	Financial Accountant	1	0700
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## EMPOWERMENT ZONE OUTREACH AND TECHNICAL ASSISTANCE

### *Economic Development*

0923	Sr. Economic Development Specialist	1	1600
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## NEIGHBORHOOD COMMERCIAL REVITALIZATION ADMINISTRATION

### *Housing & Neighborhood Services*

0040	Administrative Assistant I	1	6100
0161	Sr. Planner	1	6100
0923	Sr. Economic Development Specialist	1	6100

## LEGAL ADMINISTRATION

### *City Attorney's Office*

0015	Paralegal	1	0600
0063	Assistant City Attorney II	1	0600
0065	Assistant City Attorney III	1	0600
0093	Legal Secretary	2	0600

ATTACHMENT III

HOME FUNDED PERSONNEL CLASSIFICATIONS  
&  
PAY RANGES

<u>Job Class</u>	<u>Job Title</u>	<u>#of Positions</u>	<u>Business Area</u>
0046	Management Analyst	4	3100
2063	Administrative Associate	1	3100

ESG/ HOPWA ADMINISTRATION  
*DCI, Community Action Division*

0046	Management Analyst	1	3800
0961	Caseworker I	1	3800
0971	Caseworker II	2	3800



**CITY OF SAN ANTONIO**  
**Request for Council Action**

Agenda Item # 56  
Council Meeting Date: 6/19/2008  
RFCA Tracking No: R-3514

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**DEPARTMENT:** Community Initiatives

**DEPARTMENT HEAD:** Dennis J Campa

**COUNCIL DISTRICT(S) IMPACTED:**  
City Wide

**SUBJECT:**  
Community Development Block Grant Funds and HUD Capital Improvement Loan

**SUMMARY:**

A. This ordinance authorizes the appropriation of Community Development Block Grant (CDBG) Public Service projects in the amount of \$2,157,872.00 as part of the FY 2008-2009 Consolidated Annual Action Plan/Budget, and authorizes the Director of Grants Monitoring and Administration, or his designee, to execute the associated delegate agency contracts. The CDBG (with the exception of the Public Service Projects), HOME, ADDI, ESG and HOPWA Entitlement programs were adopted on May 29, 2008. This ordinance appropriates the CDBG Public Service budget in the amount of \$2,157,872.00 (Attachment II).

B. This ordinance authorizes the reprogramming of funds from the District 2 Pilot Makeover Program in the amount of \$68,441.00 in CDBG Entitlement funds, and \$400,000.00 in Section 108 Capital Improvement Loan Program - Judson Candy Lofts for a total reprogramming budget of \$468,441.00; and authorizes the allocation and appropriation of funds consistent with Attachment 1. This ordinance also authorizes the Director of Grants Monitoring and Administration to execute any and all documents in association to the aforementioned actions.

**BACKGROUND INFORMATION:**

A. The agencies recommended for funding were selected through the Consolidated Human Development Services Funding Pool for FY 2009 and FY 2010. Consistent with HUD regulations, a Citywide Public Hearing was held on June 5, 2008 to receive citizen input on these recommendations.

B. In addition, during the May 29, 2008 FY 2008-2009 Consolidated Annual Action Plan/Budget adoption, and again during the June 5, 2008 Public Hearing, City Council directed staff to revise the budget for the District 2 Pilot Makeover Program and reallocate said funds to the Faith and Action Facility Improvement in the amount of \$68,441.00. City Council also directed staff to redirect funds from the Section 108 Capital Improvement Program, Judson Candy Lofts in the amount of \$400,000.00 and redirect said funds to the Family Services Association in the amount of

\$260,000.00. The remaining \$140,000.00 will be returned to the Section 108 Capital Improvement Program, District 1 Access and Mobility Fund.

**ISSUE:**

A. On August 14, 2008, the City Manager will present the FY 2009 Proposed Budget including the remaining recommendations for the Consolidated Human Development Services Funding Pool. Final adoption of these funds will be considered on September 11, 2008, as part of the City's Adopted Budget. The proposed funding for CDBG Public Service delegates is included as Attachment 2.

B. There are no issues with this Reprogramming Action. Acceptance of this action will continue the City's efforts to provide decent, safe and affordable housing and community development activities to low and moderate income households.

**ALTERNATIVES:**

A. If this ordinance is not approved, the City of San Antonio will forfeit \$2,157,872.00 in CDBG funding which was appropriated to improve the quality of life for its residents.

B. The funds being considered for reprogram can be reallocated to other eligible activities; however, the projects listed in Attachment I are consistent with the directives given to staff by Council.

**FISCAL IMPACT:**

A. The FY 2008-2009 CDBG Public Service Allocation proposes funding support for various projects, utilizing the entitlement grants expected to be received from HUD as follows:

<b>Program</b>	<b>FY 2008-2009</b>
CDBG-Public Service	\$ 2,157,872.00

B. This proposed action will be funded with revenues identified in Tables 1 and 2 located in Attachment 1. There is no additional impact to the General Fund Budget.

**RECOMMENDATION:**

Staff recommends approval of the appropriation of CDBG funds as part of the FY 2008 - 2009 Consolidated Annual Action Plan/Budget and reprogramming of funds.

**ATTACHMENT(S):**

File Description	File Name

<a href="#">Attachment I-CDBG and Section 108 Capital Improvements Program Reprogramming</a>	June19Reprogramming.pdf
<a href="#">Attachment II-CDBG-Public Service Allocation FY 2008-2009</a>	CDBG-Public Service Allocation FY 2008-2009 Att. 2.pdf
<a href="#">Voting Results</a>	
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplemental Documents</a>	200806190596.pdf
<a href="#">Ordinance/Supplemental Documents</a>	200806190597.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Dennis J Campa Director Community Initiatives

**APPROVED FOR COUNCIL CONSIDERATION:**

Frances A. Gonzalez Assistant City Manager