

AN ORDINANCE 2012-06-21-0515

**AUTHORIZING AN AGREEMENT WITH THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT IN AN AMOUNT NOT TO EXCEED \$111,000.00 FOR IMPROVEMENTS AND RENOVATION OF DISTRICT PROPERTIES TO BE USED FOR THE PURPOSE OF INCREASING ACCESS TO PHYSICAL ACTIVITY RESOURCES FOR RESIDENTS OF THE CITY OF SAN ANTONIO AND BEXAR COUNTY.**

\* \* \* \* \*

**WHEREAS**, in early 2010 the federal government awarded the City of San Antonio (City), on behalf of the San Antonio Metropolitan Health District (Metro Health) an American Reinvestment and Recovery Act - Communities Putting Prevention to Work (CPPW) grant for \$15.6 million in order to make policy, environmental, and systems changes to prevent obesity; and

**WHEREAS**, in an effort to increase the accessibility of physical activity resources to City and Bexar County residents, the City previously entered agreements with two area school districts to utilize school district facilities to provide public space for physical activity; and

**WHEREAS**, facilities that received improvements will be open to the entire community outside of school hours and remain open within a reasonable curfew to improve access to physical activity resources for the local community for a minimum of five years; and

**WHEREAS**, the Center's for Disease Control and Prevention approved the addition of one school-based shared use agreement for the current CPPW grant no-cost extension period; and

**WHEREAS**, the funds, equal in amount to those of previous school shared use agreements, are to be applied to a school district serving the Healthy Kids Healthy Communities target area which has not previously received funding through this mechanism; and

**WHEREAS**, the only school district meeting these criteria is the San Antonio Independent School District; and

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

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

**SECTION 1.** The City Manager or her designee, or the Director of the San Antonio Metropolitan Health District or his designee, is authorized to execute an agreement with the San Antonio Independent School District (District) in an amount not to exceed \$111,000.00 for improvements and renovation of District properties to be used for the purpose of increasing access to physical activity resources for residents of the City of San Antonio and Bexar County. A copy

of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** Fund 2302236001 entitled "ARRA - CPPW" and Internal Order 136000000465, are hereby designated for use in the accounting for the fiscal transaction in the authorization of this agreement.

**SECTION 3.** The sum of \$111,000 is hereby appropriated in the above designated fund and will be disbursed from 5202020 "Contractual Services". Payment is authorized to San Antonio Independent School District upon issuance of purchase orders.

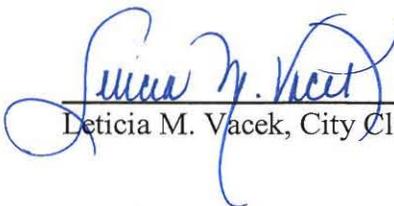
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions,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

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

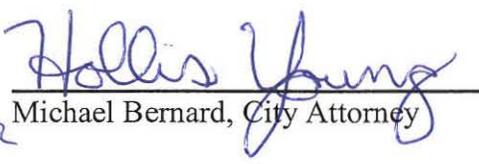
PASSED AND APPROVED this 21<sup>st</sup> day of June, 2012.

  
M A Y O R  
Julián Castro

**ATTEST:**

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

**APPROVED AS TO FORM:**

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



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 61

<b>Name:</b>	61						
<b>Date:</b>	06/21/2012						
<b>Time:</b>	05:02:15 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing an agreement with the San Antonio Independent School District (District) in an amount not to exceed \$111,000.00 for improvements and renovation of District properties to be used for the purpose of increasing access to physical activity resources for residents of the City of San Antonio and Bexar County. [Erik Walsh, Deputy City Manager; Dr. Thomas L. Schlenker, Director of Public Health]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3	x					
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x			x	
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10	x					

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

San Antonio Independent School District  
141 Lavaca  
San Antonio, TX 78210

**Funding and Shared Use Agreement**

This Funding and Shared Use Agreement (the “Agreement”) is entered into between the San Antonio Independent School District, which is an Independent School District organized under Education Code Chapter 11 (“DISTRICT”), and the City of San Antonio (“City”), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (“SAMHD”) (hereinafter collectively referred to as the “Parties”) pursuant to Ordinance No. 2012-06-21-\_\_\_\_\_, passed and approved on the 21st day of June, 2012.

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

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

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

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

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

**I. PURPOSE**

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

**II. TERM**

2.1 This agreement becomes effective immediately upon execution by DISTRICT and the City and will terminate on June 30, 2017.

**III. JOINT ACKNOWLEDGMENTS**

3.1 The DISTRICT agrees and understands that the City expects to pay all obligations set out within this Agreement with funding from the 2009 American Recovery and Reinvestment Act ("ARRA"), U.S. Department of Health and Human Services ("HHS") and Centers for Disease Control and Prevention ("CDC"). Accordingly, if funding is not received by City in a sufficient amount to pay any of City's obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor DISTRICT will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

**IV. RESPONSIBILITIES OF THE CITY**

4.1 In consideration of DISTRICT'S performance of all services and activities set forth in this Agreement, City agrees to reimburse DISTRICT for all Eligible Expenses (as defined in Section 7.01) for the Project incurred hereunder in an amount not to exceed ONE HUNDRED ELEVEN THOUSAND DOLLARS AND NO/100THS (\$111,000.00).

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

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

**V. RESPONSIBILITIES OF DISTRICT**

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

- 5.1.1 Planning, improvement, renovation and installation of infrastructure, as necessary, to meet the goals set out below:
  - a) Removal and installation of new basketball/tennis courts at Lowell Academy, to include net posts and tennis net.
  - b) Resurfacing of basketball/tennis courts at Rhodes Middle School and Young Women's Leadership Academy.
  - c) Resurfacing of tennis court at Rogers Middle School.

d) Purchase and installation of outdoor basketball goals at Maverick Elementary School.

5.2 DISTRICT agrees that all work to the locations identified above will be completed by November 30, 2012.

5.3 DISTRICT agrees to use a process to select its contractor(s) that includes solicitation of multiple potential entities and selection is based on a reasonable evaluation of qualifications, experience, price and the ability to meet the needs of DISTRICT and the provisions of this Agreement.

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

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

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

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

5.8 DISTRICT shall submit all invoices for work, materials or services provided under this Agreement by December 18, 2012.

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

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

5.11 DISTRICT agrees that the properties developed and improved under this Agreement will be operational and open to the public for the duration of this agreement.

**VI. REQUESTS FOR and RETENTION of RECORDS**

6.1 DISTRICT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 DISTRICT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, DISTRICT shall retain the records until the resolution of such litigation or other such questions. DISTRICT acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require DISTRICT to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if DISTRICT receives inquiries regarding documents within its possession pursuant to this Agreement, DISTRICT shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to state or federal law, the DISTRICT shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of DISTRICT’s receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

**VII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY**

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

**VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 8.1 DISTRICT further represents and warrants that as of the date hereof:
- 8.1.1 All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.
- 8.1.2 It is financially stable and capable of fulfilling its obligations under this Agreement and that DISTRICT shall provide City immediate written notice of any adverse material change in the financial condition of DISTRICT that may materially and adversely affect its obligations hereunder.
- 8.1.3 None of the provisions contained herein contravene or in any way conflict with the authority under which DISTRICT is doing business or with the provisions of any existing indenture or agreement of DISTRICT.

**IX. TERMINATION**

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

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

9.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article X - Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

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

9.4 Defaults With Opportunity for Cure. Should the DISTRICT default in the performance of this Agreement in a manner stated in this section 9.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. The DISTRICT shall have ten (10) calendar days after receipt of the written notice, in accordance with Article X - Notice, to cure such default. If the DISTRICT fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against DISTRICT's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 9.4.1 Bankruptcy or selling substantially all of company's assets
- 9.4.2 Failing to perform or failing to comply with any covenant herein required
- 9.4.3 Performing unsatisfactorily

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

9.6 Regardless of how this Agreement is terminated, DISTRICT shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by DISTRICT, or provided to DISTRICT, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by DISTRICT in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at DISTRICT's sole cost and expense. Payment of compensation due or to become due to DISTRICT is conditioned upon delivery of all such documents, if requested.

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

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

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

## X. NOTICE

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

**If to the City:**

Thomas L. Schlenker, M.D., MPH  
Director, SAMHD  
332 W. Commerce, Suite 307  
San Antonio, TX 78205

**If to the DISTRICT:**

Dr. Sylvester Perez  
Interim Superintendent  
San Antonio ISD  
141 Lavaca  
San Antonio, TX 78210

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

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

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

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

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

collectively as Attachment II.

12.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of the SAMHD, as representatives of the City and the parties ultimately responsible for all matters of compliance with CDC/HHS/ARRA and City rules and regulations, shall have the final authority to render or secure an interpretation.

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

12.4 DISTRICT shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the grant in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by 45 C.F.R. §74.53 or 45 C.F.R. §92.42, as applicable, whichever is longer. Notwithstanding the foregoing, DISTRICT shall maintain all Agreement and grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. If an audit, litigation, or other action involving the records has been initiated before the end of the four (4) year period, DISTRICT agrees to maintain the records until the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later.

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

12.6 The SAMHD is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with general or grant funds, including the Project covered by this Agreement. Therefore, DISTRICT agrees to permit City and/or HHS to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess DISTRICT's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by the SAMHD, the DISTRICT shall furnish to the SAMHD and the Grantor of the Grant Funds, if applicable, such statements, reports, records, data, all policies and procedures and information as may be requested by the SAMHD and shall permit the City and Grantor of the Grant Funds, if applicable, to have interviews with its personnel, board members and program participants

pertaining to the matters covered by this Agreement. DISTRICT agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall not relieve the Contactor of any liability to the City for failure to comply with the Terms of the Grant or the terms of this Agreement.

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

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

12.9 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by the SAMHD shall be submitted by DISTRICT to City within five (5) working days of the request. The parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. In the event that DISTRICT fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the City may, upon reasonable notice, suspend reimbursements to DISTRICT until such reports are delivered to City. Furthermore, the DISTRICT ensures that all information contained in all required reports or information submitted to City is accurate.

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

aforementioned obligations.

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

12.12 Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work identified in this Agreement will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determinations; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for

the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

12.13 Enforcement. Notwithstanding Section 12.12 above, DISTRICT or its contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him.

**XIII. INSURANCE**

13.1 A) Prior to the commencement of any work under this Agreement, DISTRICT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Health Department, which shall be clearly labeled “ARRA-CPPW Shared Use Project” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Health Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

**C) DISTRICT’s financial integrity is of interest to the City; therefore, subject to DISTRICT’s right to maintain reasonable deductibles in such amounts as are approved by the City, DISTRICT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at DISTRICT’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:**

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors	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

c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	f. \$100,000
4. 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

D) DISTRICT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of DISTRICT herein, and provide a certificate of insurance and endorsement that names the DISTRICT and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers’ compensation and professional liability policies;
- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

H) .In addition to any other remedies the City may have upon DISTRICT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order DISTRICT to stop work hereunder, and/or withhold any payment(s) which become due to DISTRICT hereunder until DISTRICT demonstrates compliance with the requirements hereof.

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

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

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

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

#### **XIV. INDEMNIFICATION**

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

**XV. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY**

15.1 The City's Small Business Economic Development Advocacy (SBEDA) program and its requirements for this Agreement are addressed in Attachment IV attached hereto and incorporated herein for all purposes.

**XVI. APPLICABLE LAW**

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

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

**XVII. AMENDMENTS**

17.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and DISTRICT. The Director of the SAMHD may execute contract amendments on behalf of City in the following circumstances a) budget adjustments authorized by the funding agency so long as the total dollar amount of the budget remains unchanged, b) modifications to the performance measures listed in the contract so long as the terms of the amendment stay within the parameters set forth in the statement of work of said contract and c) changes in state or federal regulations mandated by the funding agency.

**XVIII. SEVERABILITY**

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

**XIX. LEGAL AUTHORITY**

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

**XX. ENTIRE AGREEMENT**

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

**CITY**

**DISTRICT**

\_\_\_\_\_  
City of San Antonio

\_\_\_\_\_  
Dr. Sylvester Perez  
San Antonio Independent School District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

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

**ATTACHMENTS**

- Attachment I – Scope of Work and Projected Budget
- Attachment II – Award Letter
- Attachment III – Special Provisions
- Attachment IV – SBEDA Requirements
- Attachment V - Discretionary Contracts Disclosure Form
- Attachment VI – Subcontractor Utilization Plan

**Attachment I**  
**Scope of Work and Projected Budget**

Project	Scope of Work	Budget	Completion Date
<b>Lowell Academy</b>	Removal of deteriorated hardscape and installation of new asphalt basketball/tennis courts. Purchase and installation of net posts and tennis net	\$31,974	November 30, 2012
<b>Rogers Middle School</b>	Resurfacing of tennis court	\$19,135	November 30, 2012
<b>Rhodes Middle School</b>	Resurfacing of basketball/tennis court	\$18,383	November 30, 2012
<b>Maverick Elementary School</b>	Purchase and installation of outdoor basketball goals	\$4,000	November 30, 2012
<b>Young Women's Leadership Academy</b>	Resurfacing of basketball/tennis courts	\$37,508	November 30, 2012
<b>Total Budget:</b>		\$111,000	



THIS AWARD IS ISSUED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND IS SUBJECT TO SPECIAL HHS TERMS AND CONDITIONS AS REFERENCED IN SECTION III

**Grant Number:** 1U58DP002453-01

**Principal Investigator(s):**

Jennifer Herriott

**Project Title:** CATEGORY A: COMMUNITIES PUTTING PREVENTION TO WORK

FERNANDO GUERRA  
SAN ANTONIO METROPOLITAN HEALTH  
332 WEST COMMERCE STREET  
SAN ANTONIO,, TX 78205

**Budget Period:** 03/19/2010 – 03/18/2012

**Project Period:** 03/19/2010 – 03/18/2012

Dear Business Official:

The Centers for Disease Control and Prevention hereby awards a grant in the amount of \$15,612,353 (see "Award Calculation" in Section I and "Terms and Conditions" in Section III) to SAN ANTONIO METROPOLITAN HEALTH DISTRICT in support of the above referenced project. This award is pursuant to the authority of 301A,311BC,317K2(42USC241A,243BC247BK2) and is subject to the requirements of this statute and regulation and of other referenced, incorporated or attached terms and conditions.

Acceptance of this award including the "Terms and Conditions" is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system.

If you have any questions about this award, please contact the individual(s) referenced in Section IV.

Sincerely yours,

Tracey M Sims  
Grants Management Officer  
Centers for Disease Control and Prevention

Additional information follows

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**SECTION I – AWARD DATA – 1U58DP002453-01****Award Calculation (U.S. Dollars)**

Salaries and Wages	\$669,329
Fringe Benefits	\$229,864
Personnel Costs (Subtotal)	\$899,193
Equipment	\$7,595
Supplies	\$912,372
Travel Costs	\$29,424
Other Costs	\$8,220,950
Consortium/Contractual Cost	\$5,383,662

Federal Direct Costs	\$15,453,196
Federal F&A Costs	\$159,157
Approved Budget	\$15,612,353
Federal Share	\$15,612,353
<b>TOTAL FEDERAL AWARD AMOUNT</b>	<b>\$15,612,353</b>

**AMOUNT OF THIS ACTION (FEDERAL SHARE) \$15,612,353**

**Fiscal Information:**

CFDA Number: 93.724  
EIN: 1746002070A2  
Document Number: UDP002453A

	IC	CAN	2010
DP		9391055	\$15,612,353

SUMMARY TOTALS FOR ALL YEARS		
YR	THIS AWARD	CUMULATIVE TOTALS
1	\$15,612,353	\$15,612,353

**CDC Administrative Data:**  
PCC: / OC: 4151

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**SECTION II – PAYMENT/HOTLINE INFORMATION – 1U58DP002453-01**

For payment information see Payment Information section in Additional Terms and Conditions.

**INSPECTOR GENERAL:** The HHS Office Inspector General (OIG) maintains a toll-free number (1-800-HHS-TIPS [1-800-447-8477]) for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Information also may be submitted by e-mail to [hhstips@oig.hhs.gov](mailto:hhstips@oig.hhs.gov) or by mail to Office of the Inspector General, Department of Health and Human Services, Attn: **HOTLINE**, 330 Independence Ave., SW, Washington DC 20201. Such reports are treated as sensitive material and submitters may decline to give their names if they choose to remain anonymous. This note replaces the Inspector General contact information cited in previous notice of award.

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**SECTION III – TERMS AND CONDITIONS – 1U58DP002453-01**

This award is based on the application submitted to, and as approved by, CDC on the above-titled project and is subject to the terms and conditions incorporated either directly or by reference in the following:

- The grant program legislation and program regulation cited in this Notice of Award.
- The restrictions on the expenditure of federal funds in appropriations acts to the extent those restrictions are pertinent to the award.
- 45 CFR Part 74 or 45 CFR Part 92 as applicable.
- The HS Grants Policy Statement, including addenda in effect as of the beginning date of the budget period.

e. This award notice, INCLUDING THE TERMS AND CONDITIONS CITED BELOW.

**Treatment of Program Income:**  
Additional Costs

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**SECTION IV – DP Special Terms and Conditions – 1U58DP002453-01**

Notice of Cooperative Agreement

Cooperative Agreement Number: 1 U58 DP002453-01

ARRA AWARD - Category A: \$15,612,353.

Grantee: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

Note 1. INCORPORATION. Funding Opportunity Announcement Number CDC-RFA-DP09-912ARRA titled, U.S Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), American Recovery and Reinvestment Act of 2009, Communities Putting Prevention to Work; the Category A (Obesity, Physical Activity and Nutrition) application dated 11/30/2009; and budget discussions held 2/12/2010.

Note 2. RESPONSE TO SUMMARY STATEMENT: Attached to this Notice of Award is a Summary Statement providing the strengths, weaknesses and recommendations of the application. A response to the Recommendations and Weaknesses within the summary statement must be submitted to the Grants Management Specialist no later than 30 days from the issue date of the Notice of Grant Award. Failure to respond could result in enforcement actions, including withholding of funds or termination.

Note 3. APPROVED FUNDING: Funding in the amount of \$15,612,353. is approved for the budget period, which is March 19, 2010, through March 18, 2012.

Grantee must submit a revised budget, budget narrative and a statement identifying any initially proposed activities that will no longer be pursued as a result of available funding as stated in the Notice of Award. Grantee shall submit a revised 424a, budget narrative and the statement identifying any initially proposed activities that will no longer be pursued to the Grants Management Specialist identified at Note 19 within 30 days from the effective date of this Notice of Award.

Note 4. INDIRECT COSTS.

Indirect costs are approved based on the Indirect Cost Rate Agreement dated June 12, 2009 which calculates indirect costs as follows, a provisional rate is approved at a rate of 17.70% of the base, which includes, total salaries and fringe benefits. The effective dates of this indirect cost rate are from June 12, 2009 until amended.

Note 5. REPORTING REQUIREMENTS.

Final performance and Financial Status reports are due no more than 90 days after the end of the project period. These reports must be submitted to the grants management specialist identified at Note 19.

Note 6. ADDITIONAL REQUIREMENTS:

Grantees are required to participate in the meetings and trainings described in the funding opportunity announcement.

Grantees must ensure that three members of the Leadership Team: the Program Director, the Program Coordinator or equivalent, and one additional leader outside the health department attend a kick-off meeting in Atlanta Georgia April 13 ? 15, 2010.

Grantees must ensure that 8-10 members of the Leadership team participate in one Regional Action Institute currently scheduled as follows:

May 25-28: San Diego Marriott Hotel and Marina

June 1-4: Hyatt Regency Capitol Hill

June 8-11: St. Louis Union Station Marriott

Note 7. CORRESPONDENCE. ALL correspondence (including emails and faxes) regarding this award must be dated and, identified with the AWARD NUMBER.

Note 8. PRIOR APPROVAL: All requests which require the prior approval of the Grants Management Officer as noted in 45 CFR 92 or 45 CFR 74 must bear the signature of an authorized official of the business office of the grantee organization as well as the principal investigator or program or project director. Any requests received, which reflect only one signature, will be returned to the grantee unprocessed. Additionally, any requests involving funding issues must include a new proposed budget, and a narrative justification of the requested changes.

Note 9. INVENTIONS. Acceptance of grant funds obligates recipients to comply with the standard patent rights clause in 37 CFR 401.14.

Note 10. PUBLICATIONS. Publications, journal articles, etc. produced under a CDC grant support project must bear an acknowledgment and disclaimer, as appropriate, such as,

This publication (journal article, etc.) was supported by the Cooperative Agreement Number above from The Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention.

Note 11. CONFERENCE DISCLAIMER AND USE OF LOGOS.

Disclaimer. Where a conference is funded by a grant or cooperative agreement, a subgrant or a contract the recipient must include the following statement on conference materials, including promotional materials, agenda, and Internet sites,

Funding for this conference was made possible (in part) by the cooperative agreement award number above from the Centers for Disease Control and Prevention. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government

Logos. Neither the HHS nor the CDC logo may be displayed if such display would cause confusion as to the source of the conference or give the false appearance of Government endorsement. A non-federal entity unauthorized use of the HHS name or logo is governed by U.S.C. 1320b-10, which prohibits the misuse of the HHS name and emblem in written communication. The appropriate use of the HHS logo is subject to the review and approval of the Office of the Assistant Secretary for Public Affairs (OASPA). Moreover, the Office of the Inspector General has authority to impose civil monetary penalties for violations (42 C.F.R. Part 1003). Neither the HHS nor the CDC logo can be used on conference materials, under a grant, cooperative agreement, contract or co-sponsorship agreement without the expressed, written consent of either the Project Officer or the Grants Management Officer. It is the responsibility of the grantee (or recipient of funds under a cooperative agreement) to request consent for the use of the logo in sufficient detail to assure a complete depiction and disclosure of all uses of the Government logos, and to assure that in all cases of the use of Government logos, the written consent of either the Project Officer or the Grants Management Officer has been received.

Note 12. EQUIPMENT AND PRODUCTS. To the greatest extent practicable, all equipment and products purchased with CDC funds should be American-made. CDC defines equipment as Tangible non-expendable personal property (including exempt property) charged directly to an award having a useful life of more than one year AND an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, a lower threshold may be established. Please provide the information to the Grants Management Officer to establish a lower equipment threshold to reflect your organization policy.

The grantee may use its own property management standards and procedures provided it observes the provisions of the following sections in the Office of Management and Budget (OMB) Circular A-110 and 45 CFR Part 92:

Office of Management and Budget (OMB) Circular A-110, Sections 31 through 37 provides the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations  
<http://www.whitehouse.gov/omb/circulars/a110/a110.html>

45 CFR Parts 92.31 and 92.32 provides the uniform administrative requirements for grants and cooperative agreements to state, local and tribal governments.

Note 13. **TRAFFICKING IN PERSONS.** This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term and condition, go to [http://www.cdc.gov/od/pgo/funding/grants/Award\\_Term\\_and\\_Condition\\_for\\_Trafficking\\_in\\_Persons.shtm](http://www.cdc.gov/od/pgo/funding/grants/Award_Term_and_Condition_for_Trafficking_in_Persons.shtm)

Note 14. **ACKNOWLEDGMENT OF FEDERAL SUPPORT,** When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all awardees receiving Federal funds, including and not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

Note 15. **PAYMENT INFORMATION:**

**PAYMENT INFORMATION:** Payment under this award will be made available through the Department of Health and Human Services (HHS) Payment Management System (PMS). The Division of Payment Management; Program Support Center, administers PMS, HHS administers PMS. PMS will forward instructions for obtaining payments.

A. PMS correspondence, mailed through the U.S. Postal Service, should be addressed as follows:

Director, Division of Payment Management, OS/ASAM/PSC/FMS/DPM  
P.O. Box 6021  
Rockville, MD 20852  
Phone Number: (877) 614-5533  
Fax Numbers:  
University and Non-Profit Payment Branch (301) 443-2672  
Governmental and Tribal Payment Branch (301) 443-2569  
Cross Servicing Payment Branch: (301) 443-0377  
General Fax: (301) 443-8362

Email [PMSSupport@psc.gov](mailto:PMSSupport@psc.gov)

Website: [http://www.dpm.psc.gov/grant\\_recipient/shortcuts/shortcuts.aspx?explorer.event=true](http://www.dpm.psc.gov/grant_recipient/shortcuts/shortcuts.aspx?explorer.event=true)

B. If a carrier other than the U.S. Postal Service is used, such as United Parcel Service, Federal Express, or other commercial service, the correspondence should be addressed as follows:

Division of Payment Management  
FMS/PSC/HHS  
Rockwall Building #1, Suite 700  
11400 Rockville Pike  
Rockville, MD 20852

To expedite your first payment from this award, attach a copy of the Notice of Grant/Cooperative Agreement to your payment request form.

Note 16. **LOBBYING STATEMENT:** We want to remind you that federal law prohibits award recipients and their sub- contractors from using Federal funds for lobbying congress or a Federal agency, or to influence legislation or appropriations pending before the Congress or any State or local legislature.

This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered lobbying. That is lobbying for or against pending legislation, as well as indirect or grass roots lobbying efforts by award recipients that are directed at inducing members of the public

to contact their elected representatives at the Federal, State or local levels to urge support of, or opposition to, pending legislative proposals is prohibited.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and grassroots activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds.

CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.

All reported activity under the CPPW Communities Initiative, including Recovery Act reporting, must be activity that is consistent with federal law.

For additional guidance, please refer to the FOA, Additional Requirement # 12 on lobbying restrictions and 31 U.S.C. Section 1352; 18 U.S.C. Section 1913.

Note 17. CERTIFICATION STATEMENT: By drawing down funds, awardee certifies that proper financial management controls and accounting systems to include personnel policies and procedures have been established to adequately administer Federal awards and funds drawn down are being used in accordance with applicable Federal cost principles, regulations, and the President's Budget and Congressional intent.

Note 18. AUDIT REQUIREMENT: An organization that expends \$500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133, Audit of States, Local Governments, and Non-Profit Organizations. The audit must be completed along with a data collection form, and the reporting package shall be submitted within the earlier of 30 days after receipt of the auditors report(s), or nine months after the end of the audit period. The audit report must be sent to:

Federal Audit Clearing House  
Bureau of the Census  
1201 East 10th Street  
Jeffersonville, IN 47132

Should you have questions regarding the submission or processing of your Single Audit Package, contact the Federal Audit Clearinghouse at: (301) 763-1551, (800) 253-0696 or email: govns.fac@census.gov

The grantee is to ensure that the sub-recipients receiving CDC funds also meet these requirements (if total Federal grant or grant funds received exceed \$500,000). The grantee must also ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of non-compliance with Federal law and regulations. The grantee is to consider whether sub-recipient audits necessitate adjustment of the grantees own accounting records. If a sub-recipient is not required to have a program-specific audit, the Grantee is still required to perform adequate monitoring of sub-recipient activities. The grantee is to require each sub-recipient to permit independent auditors to have access to the sub-recipients records and financial statements. The grantee should include this requirement in all sub-recipient contracts.

#### Note 19. CDC CONTACT NAMES

##### Business and Grants Policy Contact

Tracey Sims, Grants Management Specialist  
Centers for Disease Control, PGO, Branch III  
2920 Brandywine Road, Mail Stop E-09  
Atlanta, GA 30341-4146  
Telephone: 770-488-2739  
Fax: 770-488-2778  
Email: atu9@cdc.gov

##### Programmatic and Technical Contact

Rebecca Payne, MPH

Community Interventions Team Lead  
ARRA/CPPW  
Division of Adult and Community Health, NCCDPHP  
CDC-Atlanta  
Office: 770-488-5167  
Fax: 770-488-5964  
Email: Rco0@cdc.gov

#### Note 20: RECIPIENT REPORTING REGISTRATION

Recipients and reviewers must be registered with [www.federalreporting.gov](http://www.federalreporting.gov)  
Recipients need the following to register:  
DUNS ? <http://fedgov.dnb.com/webform>  
CCR ? [www.ccr.gov/GAQ.aspx](http://www.ccr.gov/GAQ.aspx)  
FRPIN ? [www.federalreporting.gov](http://www.federalreporting.gov)

#### Note 21: CDC CODES FOR ARRA AWARDS

Awarding Code - 7523  
Funding Code ? 7523  
CFDA - 93.724  
Program TAS - 75-0942  
[http://cdc.gov/fmo/topic/Recovery\\_Act/index.html](http://cdc.gov/fmo/topic/Recovery_Act/index.html)

#### Standard Terms and Conditions for American Recovery and Reinvestment Act of 2009

##### 1. Other Standard Terms and Conditions

All other grant policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements apply unless they conflict or are superseded by the following terms and conditions implementing the American Recovery and Reinvestment Act of 2009 (ARRA) requirements below. Recipients are responsible for contacting their HHS grant/program managers for any needed clarifications.

##### 2. Recipient Reporting

Recipients of Federal awards from funds authorized under Division A of the ARRA must comply with all requirements specified in Division A of the ARRA (Public Law 111-5), including reporting requirements outlined in Section 1512 of the Act. For purposes of reporting, ARRA recipients must report on ARRA sub-recipient (sub-grantee and sub-contractor) activities as specified below.

Not later than 10 days after the end of each calendar quarter, starting with the quarter ending March 31, 2010 and reporting by April 10, 2010, the recipient must submit quarterly reports to HHS that will be posted to [Recovery.gov](http://Recovery.gov), containing the following information:

- a. The total amount of ARRA funds under this award;
- b. The amount of ARRA funds received under this award that were obligated and expended to projects or activities;
- c. The amount of unobligated award balances;
- d. A detailed list of all projects or activities for which ARRA funds under this award were obligated and expended, including:
  - The name of the project or activity;
  - A description of the project or activity;
  - An evaluation of the completion status of the project or activity;
  - An estimate of the number of jobs created and the number of jobs retained by the project or activity;
  - and
  - For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and the name of the person to contact at the agency if there are concerns with the infrastructure investment.
- e. Detailed information on any sub-awards (sub-contracts or sub-grants) made by the grant recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).

For any sub-award equal to or larger than \$25,000, the following information:  
The name of the entity receiving the sub-award;  
The amount of the sub-award;

The transaction type;  
The North American Industry Classification System code or Catalog of Federal Domestic Assistance (CFDA) number;  
Program source;  
An award title descriptive of the purpose of each funding action;  
The location of the entity receiving the award;  
The primary location of performance under the award, including the city, State, congressional district, and country; and  
A unique identifier of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity.

f. All sub-awards less than \$25,000 or to individuals may be reported in the aggregate, as prescribed by HHS.

g. Recipients must account for each ARRA award and sub-award (sub-grant and sub-contract) separately. Recipients will draw down ARRA funds on an award-specific basis. Pooling of ARRA award funds with other funds for drawdown or other purposes is not permitted.

h. Recipients must account for each ARRA award separately by referencing the assigned CFDA number for each award.

The definition of terms and data elements, as well as any specific instructions for reporting, including required formats, will be provided in subsequent guidance issued by HHS.

### 3. Buy American - Use of American Iron, Steel, and Manufactured Goods

Recipients may not use any funds obligated under this award for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless HHS waives the application of this provision. (ARRA Sec. 1605)

### 4. Wage Rate Requirements

[This term and condition shall not apply to tribal contracts entered into by the Indian Health Service funded with this appropriation. (ARRA Title VII?Interior, Environment, and Related Agencies, Department of Health and Human Services, Indian Health Facilities)]  
Subject to further clarification issued by the Office of Management and Budget, and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. (ARRA Sec. 1606)

### 5. Preference for Quick Start Activities (ARRA)

In using funds for this award for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of ARRA. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit. (ARRA Sec. 1602)

### 6. Limit on Funds (ARRA)

None of the funds appropriated or otherwise made available in ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. (ARRA Sec. 1604)

### 7. Disclosure of Fraud or Misconduct

Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://www.oig.hhs.gov/fraud/hotline/>

### 8. ARRA: One-Time Funding

Unless otherwise specified, ARRA funding to existent or new awardees should be considered one-time funding.

9. Schedule of Expenditures of Federal Awards

Recipients agree to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512(c). (2 CFR 215.26, 45 CFR 74.26, and 45 CFR 92.26)

10. Responsibilities for Informing Sub-recipients

Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds. (2 CFR 215.26, 45 CFR 74.26, and 45 CFR 92.26)

**STAFF CONTACTS**

**Grants Management Specialist:** Tracey M Sims

Centers for Disease Control and Prevention

Procurement and Grants Office

Koger Center, Colgate Building

2920 Brandywine Road, Mail Stop E-09

Atlanta, GA 30341

**Email:** tsims3@cdc.gov **Phone:** 770-488-2739 **Fax:** 770-488-2777

**Grants Management Officer:** Tracey M Sims

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2920 Brandywine Road, Mail Stop E-09

Atlanta, GA 30341

**Email:** tsims3@cdc.gov **Phone:** 770-488-2739 **Fax:** 770-488-2777

**SPREADSHEET SUMMARY**

**GRANT NUMBER:** 1U58DP002453-01

**INSTITUTION:** SAN ANTONIO METROPOLITAN HEALTH DISTRICT

<i>Budget</i>	<i>Year 1</i>
Salaries and Wages	\$669,329
Fringe Benefits	\$229,864
Personnel Costs (Subtotal)	\$899,193
Equipment	\$7,595
Supplies	\$912,372
Travel Costs	\$29,424
Other Costs	\$8,220,950
Consortium/Contractual Cost	\$5,383,662
TOTAL FEDERAL DC	\$15,453,196
TOTAL FEDERAL F&A	\$159,157
TOTAL COST	\$15,612,353

**Special Provisions**

San Antonio Independent School District (the DISTRICT) agrees and understands that funds for this project come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (ARRA, or the “Recovery Act”). The DISTRICT understands that the San Antonio Metropolitan Health District (SAMHD) is the direct grantee of funds and must adhere to grant requirements imposed by the U.S. Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC) and standard terms and conditions under ARRA (Public Law 111-5). The DISTRICT understands that as a subrecipient of these funds it must comply with timelines and requirements in coordination with SAMHD in order to meet grant requirements.

As such, the DISTRICT agrees that it will comply with all applicable requirements and provisions of ARRA, as well as terms and conditions from HHS and the CDC, including but not limited to those articulated below:

**I.  
Standard Terms and Conditions for the  
American Recovery and Reinvestment Act of 2009  
and  
U.S. Department of Health and Human Services /  
Centers for Disease Control and Prevention**

1.1 Generally: SAMHD as an HHS grantee must comply with all terms and conditions outlined in its grant award, including grant policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements, and requirements imposed by program statutes and regulations and HHS grant administration regulations, as applicable, unless they conflict or are superseded by terms and conditions implementing the American Recovery and Reinvestment Act of 2009 (ARRA) requirements. The DISTRICT, as subrecipient, must comply with all requirements for subrecipients and provide reporting and documentation to support SAMHD’s requirements under the grant award. In addition to the standard terms and conditions of award, recipients and subrecipients receiving funds under Division A of ARRA must abide by the general terms and conditions set out below.

1.2 Preference for Quick Start Activities: In using funds for this award for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of ARRA. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit. (ARRA Sec. 1602)

1.3 Limit on Funds: None of the funds appropriated or otherwise made available in ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. (ARRA Sec. 1604)

1.4 One-time Funding: Unless otherwise specified, ARRA funding to existent or new awardees should be considered one-time funding.

1.5 Civil Rights Obligations: Recipients and subrecipients of ARRA funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of services). For further information and technical assistance, please contact the HHS Office for Civil Rights at (202) 619-0403, OCRmail@hhs.gov, or <http://www.hhs.gov/ocr/civilrights/>.

1.6 Disclosure of Fraud or Misconduct: Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://www.oig.hhs.gov/fraud/hotline/>

1.7 Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards:

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 45 CFR 74.21 and 92.20 "Uniform Administrative Requirements for Grants and Agreements", as applicable, and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Subrecipients are required to include on their SEFA information specific identification of Recovery Act funding similar to the requirements for the recipient SEFA described above. This

information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

#### 1.8 Wage Rate Requirements:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

1.9 Inventions: Acceptance of grant funds obligates recipients to comply with the standard patents rights clause in 37 CFR 401.14.

1.10 Publications: Publications, journal articles, etc. produced under a CDC grant support project must bear an acknowledgment and disclaimer as appropriate, such as:

“This publication (journal article, etc.) was supported by the Cooperative Agreement Number above from the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention.”

#### 1.11 Conference Disclaimer and Use of Logos:

(a) Conferences: Where a conference is funded by a grant or cooperative agreement, a subgrant or a contract, the recipient must include the following statement on conference materials, including promotional materials, agenda and Internet sites:

“Funding for this conference was made possible (in part) by the cooperative agreement award number above from the Centers for Disease Control and Prevention. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily represent the official policies of the Department of Health and Human Services, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.”

(b) Logos: Neither the HHS nor the CDC logo may be displayed if such display would cause confusion as to the source of the conference or give the false appearance of Government endorsement. Unauthorized use of the HHS name and logo by a non-federal entity is governed by U.S.C. 1320b-10, which prohibits the misuse of the HHS name and emblem in written communication. The appropriate use of the HHS logo is subject to the review and approval of the Office of the Assistant Secretary for Public Affairs (OASPA). Moreover, the Office of the Inspector General has authority to impose civil monetary penalties for violations (42 CFR Part 1003). Neither the HHS nor the CDC logo can be used for conference materials under a grant, cooperative agreement, contract or co-sponsorship agreement without the expressed, written consent of either the Project Officer or Grants Management Officer. It is the responsibility of the grantee (or recipient of funds under a cooperative agreement) to request consent for the use of the logo in sufficient detail to assure a complete depiction and disclosure of all uses of the Government logos, and to assure that in all cases of the use of Government logos, the written consent of either the Project Officer or the Grants Management Officer has been received.

1.12 Equipment and Products: To the greatest extent practicable, all equipment and products purchased with CDC funds should be American-made. CDC defines equipment as tangible non-expendable personal property (including exempt property) charged directly to an award having a useful life of more than one year AND an acquisition cost of \$5,000.00 or more per unit. However, consistent with recipient policy, a lower threshold may be established upon submission to the Grant Management Officer to reflect recipient organization policy.

The grantee may use its own property management standards and procedures provided it observes the provisions of the following sections in the Office of Management and Budget (OMB) Circular A-110, and 45 CFR Part 92:

OMB Circular A-110, sections 31 and 37 provides the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals and other non-profit organizations. <http://www.whitehouse.gov/omb/circulars/a110/a110.html>

45 CFR Part 92.31 and 92.32 provides uniform administrative requirements for grants and cooperative agreements to state, local and tribal governments. [http://access.gpo.gov/nara/cfr/waisidx\\_03/45cfr92\\_03.html](http://access.gpo.gov/nara/cfr/waisidx_03/45cfr92_03.html)

1.13 Trafficking in Persons: This award is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22U.S.C. 7104). For the full text of the award term and condition, go to: [http://www.cdc.gov/od/pgo/funding/grants/Award\\_Term\\_and\\_Condition\\_for\\_Trafficking\\_in\\_Persons.shtm](http://www.cdc.gov/od/pgo/funding/grants/Award_Term_and_Condition_for_Trafficking_in_Persons.shtm)

1.14 Acknowledgement of Federal Support: When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all awardees receiving Federal funds, including and not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

1.15 Lobbying: Federal law prohibits award recipients and sub-contractors from using Federal funds for lobbying Congress or a Federal agency, or to influence legislation or appropriations pending before the Congress or any State or local legislature.

This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered lobbying. That is lobbying for or against pending legislation, as well as indirect or grass roots lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal, state, or local levels to urge support of, or oppositions to, pending legislative proposals is prohibited.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and grass roots activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds.

CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.

All reported activity under the Communities Putting Prevention to Work (CPPW) Communities Initiative, including Recovery Act reporting, must be activity that is consistent with Federal law.

For additional guidance, please refer to the Funding Opportunity Announcement, Additional Requirement #12 on lobbying restrictions and 31 U.S.C. Section 1352; 18 U.S.C. Section 1913.

## **II.**

### **Requirements for Construction Projects**

2.1 Required Use of American Iron, Steel, and Manufactured Goods – Section 1605 of ARRA:

(a) Definitions.

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports,

terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

- (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act)(Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.
- (2) This requirement does not apply to the material listed by the Federal Government as follows: NONE.
- (3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal government determines that:
  - (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
  - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

- (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—
  - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.
- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data.

To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

*[List name, address, telephone number, email address, and contact for suppliers surveyed.]*

*Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site.]*

### **III. Audit Requirements**

3.1 An organization that expends \$500,000.00 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133, Audit of States, Local Governments, and Non-Profit Organizations. The audit must be completed along with a data collection form, and the reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period. The audit report must be sent to:

Federal Audit Clearing House  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

3.2 Subrecipients receiving CDC funds must also meet these requirements (if the total Federal grant or grant funds received exceed \$500,000.00). In instances of noncompliance with Federal law and regulations, the subrecipient must take appropriate corrective action within six months after receipt of the audit.

3.3 If a subrecipient is not required to have a program-specific audit, the grantee (SAMHD) is still required to perform adequate monitoring of subrecipient activities. Subrecipient shall cooperate with all such activities. Additionally, the subrecipient agrees to permit independent auditors to have access to subrecipient records and financial records as necessary.

### **IV. Reporting Requirements**

In addition to those requirements set out in the Agreement, and above in section 1.7, the following reporting requirements apply to this project:

4.1 Recipients of Federal awards from funds authorized under Division A of the ARRA must comply with all requirements specified in Division A of the ARRA, including reporting requirements outlined in Section 1512 of the Act. For purposes of reporting, recipients must report on ARRA subrecipient (sub-grantee and subcontractor) activities as specified below, and subrecipient agrees to cooperate with SAMHD in providing information as necessary for SAMHD to comply with the following requirements:

Not later than 10 days after the end of each calendar quarter, starting with the quarter ending March 31, 2010, and reporting by April 10, 2010, SAMHD must submit quarterly reports to HHS that will be posted to Recovery.gov, containing the following information:

- (a) the total amount of ARRA funds under this award;

- (b) The total amount of ARRA funds received under this award that were obligated and expended to projects or activities;
- (c) The amount of unobligated award balances;
- (d) A detailed list of all projects or activities for which ARRA funds under this award were obligated and expended, including:
  - (1) the name of the project or activity;
  - (2) a description of the project or activity;
  - (3) an evaluation of the completion status of the project or activity;
  - (4) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and,
  - (5) for infrastructure investments made by State or local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act, and the name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (e) Detailed information on any sub-awards (subcontracts or sub-grants) made by the grant recipient to include data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).
  - (1) For any sub-award equal to or larger than \$25,000.00, the following information:
    - (i) the name of the entity receiving the sub-award;
    - (ii) the amount of the sub-award;
    - (iii) the transaction type (the North American Industry Classification System code or Catalog of Federal Domestic Assistance (CFDA) number);
    - (iv) program source;
    - (v) an award title descriptive of the purpose of each funding action;
    - (vi) the location of the entity receiving the award;
    - (vii) the primary location of performance under the award, including the city, State, congressional district, and country; and
    - (viii) a unique identifier of the entity receiving the award, and the parent entity of the recipient, should the entity be owned by another entity.
- (f) All sub-awards less than \$25,000.00, or to individuals, may be reported in the aggregate, as prescribed by HHS.
- (g) Recipients must account for each ARRA award and sub-award (sub-grant and subcontract) separately. Pooling of ARRA award funds with other funds for drawdown or other purposes is not permitted.
- (h) Recipients must account for each ARRA award separately by referencing the assigned CFDA number for each award.

4.2 DISTRICT agrees to provide any and all information necessary for SAMHD to complete required reports by no later than 5 days after the end of each calendar quarter.

**ATTACHMENT IV**  
**Small Business Economic Development Advocacy Requirements**

A. SBEDA Program

The San Antonio Independent School District (DISTRICT) acknowledges that the CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Certification or “Certified”** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm

satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by DISTRICT to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if DISTRICT attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the DISTRICT shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the DISTRICT and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

**Good Faith Efforts** – documentation of the DISTRICT’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime DISTRICT’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of DISTRICT’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult person that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

**M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

**Payment** – dollars actually paid to DISTRICT and/or Subcontractors and vendors for CITY contracted goods and/or services.

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the DISTRICT.

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, DISTRICT is the Respondent.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**SBE Directory** - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

**SBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by DISTRICT may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Business Office Manager** – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

**Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or DISTRICT in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the DISTRICT and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

**Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of DISTRICT's and/or S/M/WBE firm's performance and payment under CITY contracts due to

the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract Agreement which states the DISTRICT's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of DISTRICT's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

#### C. SBEDA Program Compliance – General Provisions

As DISTRICT acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of DISTRICT's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. DISTRICT voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, DISTRICT further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. DISTRICT shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding DISTRICT's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. DISTRICT shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of DISTRICT or its Subcontractors or suppliers;
3. DISTRICT shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. DISTRICT shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to DISTRICT's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by DISTRICT to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by DISTRICT of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. DISTRICT shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. DISTRICT shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a DISTRICT's

Subcontractor / Supplier Utilization Plan, the DISTRICT shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the DISTRICT and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. DISTRICT acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the DISTRICT and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and DISTRICT has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

#### D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. DISTRICT hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

**SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. DISTRICT agrees to subcontract at least eight percent (8%) of its prime contract value to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that DISTRICT submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by DISTRICT on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of DISTRICT to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

#### F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the DISTRICT represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, DISTRICT shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. DISTRICT's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. DISTRICT shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### G. Prompt Payment

Upon execution of this contract by DISTRICT, DISTRICT shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the DISTRICT's reported subcontract participation is accurate. DISTRICT shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of DISTRICT's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to DISTRICT, and no new CITY contracts shall be issued to the DISTRICT until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

#### H. Violations, Sanctions and Penalties

In addition to the above terms, DISTRICT acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of DISTRICT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).