KMC
1/30/14
Item No. 18

AN ORDINANCE 2014-01-30-0059

ACCEPTING AND APPROPRIATING THE USE OF $2,000,000.00 GRANT FROM THE AMERICAN BEVERAGE FOUNDATION FOR A HEALTHY AMERICA, TO SUPPORT THE OVERALL WELLNESS OF CITY EMPLOYEES.

* * * * *

WHEREAS, the City of San Antonio and City of Chicago participated in the Chicago Wellness Challenge, sponsored by The American Beverage Foundation; and

WHEREAS, The American Beverage Foundation is awarding $3,000,000 to the City having the highest percentage of participation, and $2,000,000 to the other participating City, in biometric exams and either preventive exams or completion of health risk assessments during the challenge period, as outlined in the Wellness Challenge Agreement; and

WHEREAS, this Agreement authorizes acceptance of the grant to be used in furtherance of wellness initiatives; and

WHEREAS, the City was awarded $2,000,000, and now wishes to accept the funds to be used in support of various employee wellness initiatives; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is hereby authorized to accept and use the grant from The American Beverage Foundation to promote wellness consistent with grant requirements, as reflected in the grant Agreement, a copy of which is attached hereto and incorporated herein as Exhibit "A".

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29810000, Internal Order 810000000003 and General Ledger 4502220.

SECTION 3. This Ordinance shall take effect immediately upon passage by eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of January, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**18 (in consent vote: 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 27A, 27B)**
Date:	01/30/2014
Time:	11:49:00 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the use of a $1,500,000.00 grant from the American Beverage Foundation for Healthy America to support the overall Wellness of City Employees. [Ben Gorzell, Chief Financial Officer; Joe Angelo, Chief Human Resources Officer]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

EXHIBIT A

December 10, 2012

Sheryl Sculley
City Manager
City of San Antonio
100 S. Flores
San Antonio, Texas 78205

Amer Ahmad
City Comptroller
City of Chicago
33 North La Salle Street, 6th Floor
Chicago, Illinois 60602

Re: Grant for the City of Chicago and the City of San Antonio

Dear City of Chicago and City of San Antonio,

The American Beverage Foundation for a Healthy America, EIN: 27-4908904, (the "Donor") is pleased to donate an amount not to exceed USD 5 million (the "Grant Funds") to be divided between the City of Chicago and the City of San Antonio (each to be referred to as "you" or "your" and together referred to as "the Grantees"). The Grant Funds are to be used exclusively for charitable purposes, and subject to the terms and conditions of this letter agreement ("Agreement"). The Grantees have entered into The City of Chicago – City of San Antonio Wellness Challenge Agreement, which has been designed to encourage their respective workforces and dependents to participate in preventive, wellness care. The cities are using this program to lower their spiraling healthcare costs. A copy of The City of Chicago – City of San Antonio Wellness Challenge Agreement is attached as Exhibit I.

1. **Grantee's Tax-Exempt Status.** Each of you confirm and represent that, under the United States Internal Revenue Code of 1986, as amended (the "Code"), you are a Federal, State or local government unit, or a political subdivision thereof, as provided by sections 170(b)(1)(A)(v) and 170(c)(1) of the Code. You agree to advise us immediately if there is any change in your status during the term of this Agreement.

2. **Use of Grant Funds/Special Conditions.** By execution of this letter, you agree to restrict the use of the Grant Funds solely for charitable purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B). Furthermore, you agree that you will meet the following conditions:

- You agree that the Grant Funds will be used for your wellness projects, which you have designed to encourage a healthier workforce and reduce your healthcare costs.

o If for any reason the Grant Funds are expended or granted for a purpose that requires a selection committee for the charitable grant recipient or recipients, the entire selection process will be under your total and independent control.

o Each of you confirms and represents that the receipt and the expenditure of Grant Funds shall be in compliance with the laws, rules and regulations of your respective jurisdictions. You agree to advise us immediately if there is any concern or issue regarding compliance with all applicable laws during the term of this Agreement.

o The Grantees agree that none of the Grant Funds will be provided to or used by a disqualified person with respect to the Donor as that term is defined in section 4946 of the Code, including, but not limited to, certain government officials.

o The Grantees will agree and jointly certify to the Donor the exact amount to be paid to the City of Chicago and to the City of San Antonio pursuant to this Agreement. Each of you agrees that the amounts certified will be the full amount of the Grant Funds to which you are entitled under this Agreement. Except for the first installment payments as set forth in Section 4 below, no amount will be due and owing under this Agreement until you are able to jointly certify the exact amount and have met the terms and conditions of section 4 of this Agreement. The Grantees have agreed to determine the amount to be paid to each, respectively, pursuant to the certification attached hereto as Exhibit II..

The Donor agrees that no portion of the Grant Funds is in any way earmarked, directly or indirectly and acknowledges that the Grantees each have the sole right to control and exercise discretion over the use of the Grant Funds that each receives.

3. Term. The term of this Agreement shall begin when this Agreement is executed, and shall end at the earlier of the date on which all Grant Funds are transferred pursuant to this Agreement or the Agreement is terminated by the Donor for a failure of the Grantees to meet the conditions of this Agreement.

4. Schedule of Payment of Grant Funds.

(a) After the Donor has approved the statements of how the first installments of the Grant Funds will be used for exclusively charitable purposes as provided in Section 2 of this Agreement, the first installment payments of the Grant Funds shall be paid in the amount of USD $500,000.00 to the City of Chicago and in the amount of USD $500,000.00 to the City of San Antonio on or before January 31, 2013.

(b) If all terms and conditions of this Agreement continue to be met and the Donor has approved the statements and representations from the Grantees of how the second

installments of the Grant Funds will be used for exclusively charitable purposes as provided in Section 2 of this Agreement, the second installment payments of the Grant Funds shall be disbursed by the Donor in the amounts as set forth in the completed and executed certificate contained in ExhibitII. The Donor shall issue checks in the amounts set forth within 15 business days from the date that the Donor has approved the statements and representations described in this Section 4(b). In no event shall the total amount of the installment payments to the Grantees pursuant to the Agreement exceed USD 5 million.

5. **Reporting.** We ask that you each provide us with an annual report describing the expenditures you have made with the Grant Funds and a description of the accomplishments that have been made with the assistance of these Grant Funds. Reports should be sent to the American Beverage Foundation for a Healthy America, Attention: Patricia M. Vaughan, Secretary, ABFHA, 1101 Sixteenth St. NW, Washington, DC 20036, or to such other address as may be provided to you by written notice.

6. **Publicity.** Donor may make information regarding this grant public at any time. Except as provided in this Agreement, the Grantees shall not issue any news releases, written or otherwise regarding this grant without the Donor's prior approval. Grantees also agree to provide Donor with copies of materials produced and distributed in connection with the Grantees' individual wellness programs.

7. **Representations and Warranties.** The City of Chicago represents and warrants that it has all requisite power and authority to enter into this Agreement and this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms. The City of San Antonio represents and warrants that it has all requisite power and authority to enter into this Agreement and this Agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.

8. **Governing Law.** This Agreement will be governed by and constructed in accordance with the laws of the District of Columbia. Any action for breach of this Agreement shall be commenced in Federal District or Superior Court in the District of Columbia.

9. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which together shall constitute one and the same instrument.

10. **Waiver.** The failure of a party to exercise any right, power or option given to it under this Agreement or applicable law, or to insist upon strict compliance with the terms of this Agreement shall not constitute a waiver of the terms and conditions of this Agreement with respect to any subsequent breach thereof, nor a waiver by any party of its rights at any time thereafter to require strict compliance with all of the terms of this Agreement.

11. Entire Agreement. This Agreement along with Exhibit II constitutes our entire agreement and supersedes any prior written or oral agreements or communications. The provisions of this Agreement are severable so that if any term or provision is found to be illegal, invalid or unenforceable, such finding shall not affect the validity, construction or enforceability of any remaining term or provision. To the extent there are discrepancies between this Agreement and Exhibit I, the terms of this Agreement govern. This Agreement may only modified by the parties by mutual, written agreement.

AMERICAN BEVERAGE FOUNDATION FOR A HEALTHY AMERICA

Date: 2-21-13

By: _____
for Name: Susan K. Neely
Title: President

THE CITY OF CHICAGO

Date: 2-13-13

By: _____
Name: Amer Ahmad
Title: City Comptroller

THE CITY OF SAN ANTONIO

Date: 1/30/13

By: _____
Name: Sheryl Sculley
Title: City Manager