

AN ORDINANCE

99786

AUTHORIZING THE EXECUTION OF A MANAGEMENT SERVICES CONTRACT WITH THE CARVER DEVELOPMENT BOARD IN THE AMOUNT OF \$55,598.00 FOR MANAGEMENT OF THE CARVER COMMUNITY CULTURAL CENTER FOR THE PERIOD OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2005.

* * * * *

WHEREAS, the Carver Community Cultural Center, a City facility and a special project of the Department of Community Initiatives, is a leading multicultural arts presenter and educational institution serving the San Antonio metropolitan areas; and

WHEREAS, the Carver Development Board (CDB) was established in 1987 as a 501 (c)(3) organization to benefit, carry out and/or perform the fundraising and charitable purposes for the Carver Community Cultural Center; and

WHEREAS, the CDB has provided significant benefits to the Carver Community Cultural Center; and

WHEREAS, it is the desire of the City Council to contract with the CDB to provide management services for the Carver Community Cultural Center; and

WHEREAS, in accordance with 252.022(7) (f) of the Local Government Code, the management services for the Carver Community Cultural Center are only available from the CDB; and

WHEREAS, it is necessary to authorize the execution of a management services contract for the Carver Community Cultural Center and to revise the Project budget in connection therewith; **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 Department of Community Initiatives, is authorized to execute a management services contract with the Carver Development Board (CDB) in the amount of \$55,598.00 for the purpose of managing the Carver Community Cultural Center for the period October 1, 2004 through September 30, 2005. A copy of said contract is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. The Director of Community Initiatives is authorized to approve the disbursement of \$55,598.00 to the CDB for support and administration of the Carver Community Cultural Center from the Carver's General Fund budget authorized and encumbered in Fund 11-000000 (General Fund) entitled "Fees to Professional Contractors – Carver Development Board" Index Code 339580 "Fees to Professional Contractors" in the 2004/2005 Budget. The amount of \$55,598.00 is authorized to be encumbered and made payable to the Carver Development Board.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Index Codes as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall become effective on and after October 3, 2004.

PASSED AND APPROVED this 23rd day of September, 2004.


M A Y O R
EDWARD D. GARZA

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Voting Results

Name: 28C. 99786

Date: 09/23/04

Time: 09:36:08 PM

Vote Type: Multiple selection

Description: C. An Ordinance authorizing the execution of a management services contract with the Carver Development Board in the amount of \$55,598.00 for management of the Carver Community Cultural Center for the period October 1, 2004 through September 30, 2005.

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
JOEL WILLIAMS	DISTRICT 2		x		
RON H. SEGOVIA	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
CARROLL SCHUBERT	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR		x		

STATE OF TEXAS

Contract # 4600001031

COUNTY OF BEXAR

MANAGEMENT SERVICES CONTRACT

CITY OF SAN ANTONIO

This CONTRACT is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through the Director of the Department of Community Initiatives pursuant to Ordinance No. _____ dated September 23, 2004, and the Carver Development Board, (hereinafter referred to as "Contractor",)

WITNESSETH:

WHEREAS, the City has been provided certain funds from the City of San Antonio General Fund Budget (hereinafter referred to as General Fund); and

WHEREAS, the City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for the management of the City's Carver Complex, (hereinafter referred to as "the Project"); and

WHEREAS, the City's Carver Complex shall be comprised of the Carver Community Cultural Center, the Little Carver Civic Center, the Carver Annex building and any other property that subsequently becomes part of the Carver Complex (hereinafter referred to as "Complex"); and

WHEREAS, the Department of Community Initiatives or the designated department is (hereinafter referred to as "Department") is the department responsible for monitoring this Contract; and

WHEREAS, the basic responsibilities of the Contractor include but are not necessarily limited to the following regarding the Project: (1) to provide sustaining support for the programs and activities; (2) to undertake fund-raising activities; (3) to provide financial, programming and advisory support; (4) to promote its educational program; and (5) to make improvements to the Complex; and

WHEREAS, the basic purpose of the Project includes but is not necessarily limited to the following: (1) to celebrate the diverse cultures of our world, nation and community with emphasis on its African American heritage; (2) to provide challenging artistic presentations, community outreach activities and educational programs; and (3) to sponsor a season of visual and performing arts events which feature an average of fifteen performances each year, nine to twelve exhibits, and a matinee series for children and teenagers; and

WHEREAS, the scope of this agreement shall be limited to the Project; and

WHEREAS, the City wishes to engage the Contractor to manage the Project; NOW THEREFORE:

The parties hereto agree as follows:

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 The purpose of this Contract is to set forth the duties and responsibilities of the Contractor in connection with the management, maintenance, and operation of the Project.

1.2 The Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the **Executive Summary and Balanced Scorecard Performance Plan**, affixed hereto and incorporated herein for all purposes as Attachment I.

II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on **October 1, 2004** and shall terminate on **September 30, 2005**.

III. CONSIDERATION

- 3.1 In consideration the City will reimburse Contractor for expenses incurred in accordance with the budget approved by the City Council of the City of San Antonio in Ordinance No. _____. It is specifically agreed that reimbursement hereunder shall not exceed the amount of \$ 55,598.00. The Budget is attached hereto and incorporated herein for all purposes as Attachment II.
- 3.2 The funding level of this Contract is based on an allocation from the following funding sources:

General Fund

IV. PAYMENT

- 4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in Attachment II of this Contract. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Department a written request for such advance payment, including the specific reason for such request. The Director of the Department may, in his sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Department on a case-by-case basis (c) the decision by the Director of the Department whether or not to approve an advance payment is final and (d) all payments hereunder made to Contractor not specifically authorized by the Director of the Department to be advance payments in accordance with the provisions of this paragraph are made on a cost reimbursement basis. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:

- (A) Funds received from the City by the Contractor in advance for payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that a check is available from the City.
- (B) The Contractor must deposit City funds in a separate account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited in such separate account, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that causes the Contractor's account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.

- 4.2 Contractor agrees that reimbursements of eligible expenses shall be made monthly or bi-weekly, as determined by the Director of the Department according to standard procedures followed by the City's Finance Department. The Director of the Department may require the Contractor's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.
- 4.3 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Director of the Department.
- 4.4 The Contractor shall submit to City all final requests for payment no later than 45 days from the termination date of this Contract, unless Contractor receives written authorization from the Director of the Department prior to such 45 day period allowing Contractor to submit a request for payment after such 45 day period.
- 4.5 Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor).
- 4.6 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:
- (A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) records that adequately identify the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain a separate numbered account for all funds received and disbursed through this Contract;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
 - (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with the City;
 - (G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Contractor shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and
 - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project should the Project terminate the next day is mandatory. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

- 4.7 Contractor agrees that Contractor costs or earnings claimed under this Contract will not be claimed under another contract or grant from another agency.
- 4.8 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included in the audit that is applicable to the Contractor's Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.
- 4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project, must immediately, upon receipt, be returned by Contractor to the City.
- 4.10 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Department may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

V. PROGRAM INCOME

- 5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of City funds. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract, provided however, program income shall not include revenue generated from events or performances solely paid for by Contractor. At the sole option of the Director of the Department, Contractor will either (a) be required to return program income funds to City through the Department, or (b) upon prior written approval by the Director of the Department, Contractor may be permitted to retain such funds to be:
 - (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or
 - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.
- 5.2 In any case where Contractor is required to return program income to the Department, Contractor must return such program income to City within the timeframe that may be specified by the Director of the Department. If the Director of the Department does not specify a timeframe for Contractor to return program income to City, then Contractor must return such program income to City no later than thirty (30) days from the date specified in the notice described in Article V, section 5.3 of this Contract when such program income will be generated. If the Director of the Department grants Contractor authority to retain program income, Contractor must submit all reports required by the Department within the timeframe specified in the Contract.
- 5.3 Contractor shall provide the Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.
- 5.4 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Department. Failure by

Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.

VI. ADMINISTRATION OF CONTRACT.

- 6.1 In recognition of the complexities of managing and operating the multi-faceted Project and the resultant need for specialized, professional expertise, the parties hereto understand and agree to the following basic management and operation principles:
- (a) Overall responsibility for management, maintenance and operation of the Project is vested in an Executive Committee (EC) and exercised through the Executive Director (ED) of the Project. The EC is comprised of the officers of the Contractor and two ex-officio members appointed by the Department Director. The Contractor agrees to hire an Executive Director (ED) to manage, maintain, and operate the Project. The ED shall be selected by the EC. It is understood by the parties to this contract, that Contractor shall make recommendations to the Department Director on the management, maintenance, and operation of the Project. Contractor shall have no financial obligation to maintain or operate the Project or Complex except as provided for in its lease of the Carver Annex building dated June 19, 2003 pursuant to Ordinance No. 97809. Contractor shall be allowed to use its own proceeds for maintenance and operation of the Project or Complex at its own discretion with prior approval of the Department Director or his designee.
 - (b) The Contractor and the City will determine the work location, work hours, and logistical support for the ED and staff of the Project. Staff consists of employees of the Contractor and employees of the City.
 - (c) ED will make recommendations to the Department Director with regard to personnel actions on City Employees assigned to the Project. The ED shall consult with the Executive Committee prior to recommending personnel actions on City Employees. ED shall consult with the City on all issues related to City Employees. The Department Director must finalize any decisions regarding City Employees. The ED shall be thoroughly familiar with the City Charter of the City of San Antonio and the City's Personnel rules, policies and Administrative Directives and shall conduct the business of the Project in accordance therewith.
 - (d) Contractor, through its ED, agrees to ensure that City Employees receive adequate supervision in accordance with City Administrative Directives, which includes, but is not limited to the following:
 - (1) Annual evaluations shall be completed on all fulltime and part-time employees between October and December of each year;
 - (2) An employee recently promoted/demoted or hired may be rated during the October-December period although employment is less than 1 full year;
 - (3) An Employee Performance Development Plan (EPDP) shall be completed for a new hire on the third (3rd) and fifth (5th) months;
 - (4) The fifth (5th) month evaluation shall be completed and accompanied with a Change of Status for all new hires who have successfully completed their probationary period in order to change status to permanent;
 - (5) An EPDP shall be completed at the end of six (6) months of employment for a promoted (or demoted) employee and accompanied by a Change of Status (if successful) to change probationary status to permanent. If unsuccessful, the employee is returned to prior position with a Change of Status;
 - (6) Supervisors shall meet monthly with employees under their supervision to discuss his/her performance.
 - (e) The Contractor may use its own resources to separately employ or contract with individuals and/or institutions for educational purposes at the Complex with the prior written approval of the City's Department Director or his designee.
 - (f) The Contractor's efforts, energies, expertise and resources shall be directed toward promoting and developing the educational and artistic aspects, assets and potential of the Project, advising and guiding City in these respects, generating public and private interest in and support for the Project.

- (g) All plans and programs proposed by the Contractor for the Project shall be subject to review and approval by the City through the Department Director.
 - (h) City agrees that the Contractor may contract for capital development or improvement work provided that plans for such work have been approved by the City and the funds therefor are solely from Contractor resources. City further agrees that the Contractor may contract or purchase materials, supplies and other such items as may be related to the Contractor's responsibilities under this Contract so long as funds therefor are solely from the Contractor's resources and so long as they are approved by the Department Director or his/her designated representative. Contractor understands and agrees that all improvements, structural or otherwise provided by the Contractor become the property of City.
 - (i) It is understood and agreed by the parties to this Contract, that City funds will remain in the City's Budget for Carver as set forth in the City's annual budget ordinance. Contractor agrees that the ED shall manage the City's Budget for the Carver, as set forth in the City's annual budget ordinance and will request payments for recommended expenditures, which must be approved by the Department Director or designated Department staff prior to expenditure. All City funds must be used to support the purpose of the Project as set forth in this Contract.
 - (j) The ED will book non-season events and initiate license agreements for the Project with the approval of the Department Director or his designee. The Department Director or his designee shall be authorized by ordinance to sign all legal documents in connection therewith, including license agreements. It is understood and agreed by the Contractor that Contractor shall execute a separate license agreement with the City for events or performances that the Contractor sponsors in the Complex.
 - (k) The ED shall recommend the annual Carver performance season and negotiate agreements with approval by the Department Director. The City Manager or her designee or the Department Director shall be authorized by ordinance to sign all legal documents regarding performances. Notwithstanding any other provision of this contract, the City shall have the ability to use its own resources to separately employ or contract with individuals and/or institutions for professional or other services for the Project as the City deems necessary.
 - (l) Contractor understands and agrees that establishment of admission fees and/or other charges related to the Project is the sole prerogative and responsibility of City. This provision in no way precludes Contractor from establishing membership dues or other revenue producing activities as may be approved by its Board of Directors.
 - (m) All program income from City sponsored event and performance ticket sales shall be deposited into the Carver Trust Fund, which is a line item in the City's Budget for the Carver as set forth in the City's annual budget ordinance and is available for Project activities and events. All other program income shall be deposited in the City's Budget for the Carver as set forth in the City's annual budget ordinance.
 - (n) The Contractor agrees that all money received by it from grants shall be expended for advancement of the purposes of the Contractor and Project as outlined in this Contract.
 - (o) City and Contractor further understand and agree that nothing expressed or implied herein or any actions taken in pursuit of said purposes shall in any form or fashion diminish public interest in the Contractor or the Project or the public's inherent rights thereto.
- 6.2 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of the City, the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.
- 6.3 Contractor shall not use funds awarded from this Contract as matching funds for any Federal, State or local grant without the prior written approval of the Director of the Department.
- 6.4 The City shall have the authority to make physical inspections to the Complex at any time.

- 6.5 Contractor shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor' employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to Department upon request by the Department.

VII. AUDIT

- 7.1 During the term of this Contract, the Contractor shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish the Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit from non-City resources.
- 7.2 The audited financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City and a certification from the Contractor stating whether or not the terms and conditions of the Contract were met.

The City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. The City audit staff, a Certified Public Accounting (CPA) firm, or other auditors as designated by the City, may perform such audit(s). The City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

Contractor shall, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Contract and shall continue to be so available for a minimum period of three (3) years after the termination date of this Contract. If at the end of said three (3) years, there is litigation or if the audit report covering such agreement has not been accepted, the Contractor shall retain the records until the resolution of such litigation or audit. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

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

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

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

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

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 The Department is assigned monitoring, fiscal control, and evaluation. Therefore, at such times and in such form as may be required by the Department, the Contractor shall furnish to the Department and the Grantor of the grant funds, if applicable, such statements, records, data, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.
- 8.2 The Contractor shall submit to the Department such reports as may be required by the City, including the Contract Monitoring Report, attached hereto and incorporated herein for all purposes as Attachment III.
- 8.3 Contractor 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 Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon termination of this Contract, Contractor shall return to City all copies of and materials related to the Project, including the Confidential Information.
- 8.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, the Contractor shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.
- 8.5 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any

records created during the course of performance of the Contract to any entity without the written permission of the Director of the Department, unless required to do so by a court of competent jurisdiction. The Department shall be notified of such request as set forth in Article VIII., section 8.3 of this Contract.

- 8.6 Ownership of Intellectual Property. Contractor and City agree that the Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and the tangible and intangible property rights relating to or arising out of the Project, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.
- 8.7 Within a period not to exceed 45 days from the termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.
- 8.8 Contractor agrees to comply with official records retention schedules in accordance with the local government records Act of 1989 and any amendments thereto, referenced in section 11.3 of this Contract.

IX. INSURANCE

- 9.1 Contractor agrees to comply with the following insurance provisions:
- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the Department and City Clerk's Office. Said Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The Certificate will identify this Contract by name or reference this Contract. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed, transmitted or conveyed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been properly delivered to the Department and the City Clerk's Office. No officer or employee of the City shall have authority to waive this requirement. If the City in its sole discretion determines that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit. In such an event, Contractor shall pay for such audit.
 - (B) The City reserves the right to review the insurance requirements of this Article before or during the effective period of the Contract and any extension or renewal hereof and to reasonably require modification or amendment to the insurance coverages, limits and endorsements attached thereto, when deemed necessary and prudent by the City's Risk Manager. Such modifications or amendments

will be made solely for the purpose of addressing changes in statutory law, court decisions, or circumstances surrounding this Contract.

- (C) Contractor's financial integrity is of interest to City. Contractor shall have the right to maintain reasonable deductibles in such amounts as are approved by City. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B- or better by A.M. Best Company and/or otherwise approved by City's Risk Manager in the following types and amounts:

<u>Policy Types*</u>	<u>Amount</u>
1. Worker's Compensation Employer's Liability	statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General Liab.	\$1,000,000 each occurrence \$2,000,000 aggregate

*If applicable, as determined by the City's Risk Manager

- (D) The City shall be entitled, upon request and without expense, to review copies of any and all policies, including current and past declaration pages, schedules and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for 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). Upon such request by the City, the Contractor shall exercise every reasonable effort to accomplish such changes in policy coverages, and shall pay the cost thereof.
- (E) Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following provisions:
- Name the City and its officers, employees, volunteers and elected representatives as additional insureds 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;
 - The Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under the Contract with the City of San Antonio.
 - Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.
- (F) Contractor shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

City of San Antonio
Department of Community Initiatives
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

- (G) If Contractor fails to maintain the insurance required under this Contract, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this Contract. Procuring of said insurance by the City, however, is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsements. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

X. INDEMNITY

10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

- (A) Contractor covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation of and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.
- (B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article is an INDEMNITY extended by Contractor to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the City's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. Contractor further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XI. APPLICABLE LAWS

- 11.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.2 The Contractor understands that certain funds provided pursuant to this Contract are funds which have been made available by the City's General Operating Budget. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract.
- 11.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, Contractor shall comply with the following:
- Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
 - Government Code Chapter 552 pertaining to Texas Public Information Act found at
 - Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
 - Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
 - Texas Local Government Code can be found at <http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>
- 11.4 Contractor shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- Title VII of the Civil Rights Act of 1964, as amended;
- (A) Section 504 of the Rehabilitation Act of 1973, as amended;
- (B) The Age Discrimination Act of 1975, as amended;
- (C) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
- (D) Fair Labor Standards Act of 1938, as amended;
- (E) Equal Pay Act of 1963, P.L. 88-38; and
- (F) All applicable regulations implementing the above laws.
- 11.5 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to:
- (A) worker's compensation;
- (B) unemployment insurance;
- (C) timely deposits of payroll deductions;
- (D) filing of Information on Tax Return for 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, contract or consultant work, non-employee compensation, etc;
- (E) Occupational Safety and Health Act regulations; and
- (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 11.6 Contractor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

- 11.7 Contractor agrees to abide by any and all future amendments or additions to laws, rules, regulations, policies and procedures referenced herein as they may be promulgated.
- 11.8 The Contractor shall hold meetings open to the public on those occasions when any item involving expenditures of funds provided by the City is discussed by Contractor's Board of Director's. All such meetings shall be held in accordance with the Open Meetings Act. (Chapter 551 of the Texas Government Code Annotated). The Contractor shall also notify the Department Director in writing of all meetings of the Board of Directors of Contractor and of Executive Committee and provide minutes of these meetings.

XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:
- (A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this Contract or the proceeds thereof.
- 12.5 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City Officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City Agency such as City owned utilities. An officer or employee has "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individuals or entities is party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of this business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and

certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII TERMINATION

- 13.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.
- 13.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. The Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 13.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.
- 13.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XI, Section 11.2 of this Contract, the Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to the City any remaining funds received from the City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 7.2 of this Contract. The obligations of Contractor to return such funds to the City in accordance with this paragraph, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of the project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

- 14.3 The prohibitions set forth in Article XIV., sections 14.1 and 14.2 of this Contract include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, assisting at meetings or rallies, or distributing political literature; and
 - (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel with a statement of the above prohibitions and have each individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the DEPARTMENT. Contractor shall list the name and number of a contact person from the Department on the statement that Contractor's personnel can call to report said violations.
- 14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the Contractor's personnel is terminated.
- 14.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XV. ADVERSARIAL PROCEEDINGS

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

XVI. CITY-SUPPORTED PROJECT

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

XVII. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XVIII. ASSIGNMENT

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

XIX. AMENDMENT

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

XX. SUBCONTRACTING

- 20.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of City and the approval by ordinance by the San Antonio City Council. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written agreement, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any approved sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.

XXI. OFFICIAL COMMUNICATIONS

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

City:

Director
Department of Community Initiatives
115 Plaza de Armas, Ste 210
San Antonio, TX 78205

Contractor:
Carver Development Board
215 N. Hackberry
San Antonio, TX 78202

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

XXII. VENUE

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

XXIII. GENDER

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

XXIV. AUTHORITY

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

XXV. LICENSES AND TRAINING

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

XXVI. INDEPENDENT CONTRACTOR

- 26.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.

- 26.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 26.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

XXVII. SEVERABILITY

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

XXVIII. ENTIRE CONTRACT

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

In witness of which this Contract has been executed effective the _____ day of _____, _____.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

 Director
 Department of Community Initiatives

 Carver Development Board

 215 N. Hackberry

 San Antonio, TX 78202

APPROVED BY:

 Assistant City Attorney



 Board President

ATTACHMENTS

- Attachment I –Executive Summary and Balanced Scorecard Performance Plan
 Attachment II – Budget
 Attachment III –Contract Monitoring Report

**Executive Summary
Carver Development Board
Management Services Agreement**

The Carver Development Board (CDB) was established in 1987 as a 501(c)(3) organization to exclusively benefit the Carver Community Cultural Center through the solicitation and acceptance of grant awards, donations and other fundraising activities. The Carver Center resumes hosting events at the historical cultural arts center during the 2004 - 2005 fiscal year, following construction activities in the summer of 2004.

The mission of the project is to promote, manage, maintain, and operate the Carver Complex as a multiethnic and multicultural performing and visual arts center with a primary focus on the artistic achievements of African Americans.

Contractor will provide:

Overall personnel management to Project employees
Management and operation of the Project and the Carver Complex
Recommendation and management of season and non-season performances and events

Balanced Scorecard Performance Plan

Attachment I

Contractor Name:	Carver Development Board		
Project/Program:	Management Services of the Carver Complex		
Contract Period:	10/01/04 – 9/30/05		

Outcomes Expected	Families will be strengthened through arts and cultural education by presenting a season of performing arts and exhibits
Targeted Participants	San Antonio community
Baseline Data	N/a

PERFORMANCE MEASURES

DCI Strategic Objective: <i>Agency Measure:</i>	Ensure progress toward identified performance and budget targets <i>Average attendance per performance</i>	514
DCI Strategic Objective: <i>Agency Measure:</i>	Provide Comprehensive Community Based Family Strengthening Services <i>Number of facilities managed*</i>	3
DCI Strategic Objective: <i>Agency Measure:</i>	Expand recreation and cultural services <i>Number of cultural events conducted</i>	25
DCI Strategic Objective: <i>Agency Measure:</i>	Expand recreation and cultural services <i>Number of Community bookings achieved for Little Carver</i>	260
DCI Strategic Objective: <i>Agency Measure:</i>	Expand recreation and cultural services <i>Number of Individuals Provided Cultural events</i>	12,851
DCI Strategic Objective: <i>Agency Measure:</i>	Ensure progress toward identified performance and budget targets <i>Average revenue per event conducted</i>	\$5,642

Explanatory Notes

* Carver Community Cultural Center, Little Carver Civic Center, and Carver Annex

SPECIFIC PROGRAM BUDGET

Attachment II

Contractor Name: Carver Development Board

Program Title: Carver Management Services

Cost Allocation

Cost Category	Cost	
	Requested from City \$ Amount	Total
1.000 Personnel Services**	\$ 55,598	\$ 55,598
2.000 Contractual Services	\$ -	\$ -
3.000 Commodities	\$ -	\$ -
4.000 Fixed Charges	\$ -	\$ -
5.000 Capital Outlay	\$ -	\$ -
<i>Total</i>	\$ 55,598	\$ 55,598

* Identify all other costs of program, which are NOT requested to be funded by the City of San Antonio on this page only.

** Attach job descriptions for all personnel positions that are included in the proposal budget.

2.000 Contractual Services

		Total Cost Proposed to City
2.110	Communications	
2.112	Rental of Pagers	
2.113	Mail and Parcel Post Service	
2.116	Rental of Facilities (<i>itemize</i>)	
2.119	Rental of Equipment	
2.124	Travel Official (<i>listed expected out-of-town travel</i>)	
2.127	Travel Other	
2.128	Education	
2.130	Car Allowance (<i>anticipated miles X .36</i>)*	
2.136	Linen and Laundry Service	
2.139	Maintenance and Repair - Building and Improvements	
2.140	Cleaning Services	
2.142	Maintenance and Repair - Machinery and Equipment	
2.054	Gas and Electricity	
2.157	Water	
2.159	Alarm and Security Services	
2.160	Fees to Professional Contractors (<i>itemize</i>)	
2.172	Automatic Data Processing Services	
2.175	Advertising and Publication	
2.178	Membership Dues and Licenses	
2.181	Binding, Printing and Reproduction	
2.187	Subscriptions to Publications (<i>itemize</i>)	
<i>Total Contractual Services</i>		\$ -

*NOTE: .35 per mile is used for grant funds from Alamo Workforce Development / CCDF

3.000 Commodities

		Total Cost Proposed to City
3.210	Office Supplies	
3.212	Janitorial Supplies	
3.216	Food	
3.222	Motor Fuel & Lubricants	
3.228	Chemicals, Medical and Drugs	
3.230	Photographic Supplies	
3.232	Tools, Apparatus and Accessories (under \$100 each)	
3.238	Recreation Supplies	
3.240	Maintenance and Repair Materials (Bldg. & Improvements)	
3.242	Maintenance and Repair Materials (Machinery & Equipment)	
3.243	Computer Software	
3.244	Other Commodities	
<i>Total Commodities</i>		\$ -

4.000 Fixed Charges

		Total Cost Proposed to City
4.260	Insurance (Building, Liability, Hazard) <i>(itemize)</i>	
4.276	Direct Assistance to Participants <i>(itemize by type, i.e. rental, medical, etc...)</i>	
<i>Total Fixed Charges</i>		\$ -

5.000 Capital

		Total Cost Proposed to City
5.360	Computer Equipment <i>(itemize)</i>	
5.373	Machinery and Equipment - Other <i>(itemize)</i>	
5.375	Furniture and Fixtures <i>(itemize)</i>	
<i>Total Fixed Charges</i>		\$ -

Total Program Budget \$ 55,598.00

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
DEPARTMENT OF COMMUNITY INITIATIVES**

TO: Mayor and City Council

FROM: Dennis J. Campa, Director, Department of Community Initiatives

THROUGH: Terry M. Brechtel, City Manager

COPIES: Frances A. Gonzalez, Assistant City Manager; City Attorney's Office; Finance Department; Office of Management & Budget; Office of Cultural Affairs; Asset Management; Carver Development Board; File

SUBJECT: Carver Season of Events, funding and management services contract

DATE: September 23, 2004

SUMMARY AND RECOMMENDATIONS

- A. This ordinance authorizes the execution of 15 professional artistic contracts related to the Carver Community Cultural Center's 2004-2005 season of events, in an amount not to exceed \$163,592. It also authorizes the execution of professional and related technical services agreements, and theater rental agreements as required for the 2004-2005 Carver Season of Events. It also authorizes negotiations with comparable contractors in the event professional artist contracts are cancelled and provides authority to negotiate tentative reservation performance dates through calendar year 2006. It authorizes the transfer of funds allocated from the Community and Visitor Facilities Fund and the Carver Community Cultural Center Trust Fund in the amount of \$203,525 to the Organizational Support Project of the Carver Community Cultural Center's operational budget and approves a personnel complement.
- B. This ordinance authorizes the acceptance of \$41,500 from the Carver Development Board in support of the Carver Community Cultural Center's artistic performance fees and operational costs to the Organizational Support Project.
- C. This ordinance authorizes the execution of a management services contract in the amount of \$55,598 with the Carver Development Board (CDB) for operation of the Carver Community Cultural Center for the term October 1, 2004 through September 30, 2005.
- D. This ordinance establishes a \$1.00 preservation fee to be charged per Carver event ticket that will be used to offset normal wear and tear repair costs of the facility.
- E. This ordinance establishes a Renewal and Replacement Fund for the receipt of preservation fee funds received from Carver event ticket sales.

Staff recommends approval of these ordinances.

BACKGROUND INFORMATION

The Carver Development Board (CDB) was established in 1987 as a 501(c)(3) organization to exclusively benefit the Carver Community Cultural Center through the solicitation and acceptance of grant awards, donations and other fundraising activities. The City, in collaboration with the CDB, has a 16-year history of bringing the residents of San Antonio quality cultural performing arts presentations and enriching the community through other arts educational opportunities. The Carver Center resumes hosting events at the historical cultural arts center during the 2004 - 2005 fiscal year, following construction activities in the summer of 2004.

Beginning its 27th season of internationally known performing artists, the Carver Center has planned a total of 21 performance events in music, dance and theatre arts outlined in Attachment A. Two artists will provide two performances and four performances will be paid by the Carver Development Board. Partners collaborating with the Carver include the CDB, Trinity University and the Asia India Society of San Antonio. The partners will pay the artistic fees for four of the performance events. Fourteen performance events are billed as Carver Main Stage and seven performance events will be presented at the Little Carver Civic Center and are billed as the Little Carver Intimate Series. The artistic contract with world-renowned artist Aaron Neville requires additional compensation consideration of \$2,500 only if ticket sales exceed 2,300 seats, and an additional bonus compensation of \$2,500 if ticket sales exceed 2,500 seats. The Carver Main Stage performance events will be held either at the Laurie Auditorium or at the Carver Theatre.

All ticket revenues for performance events are deposited into the Carver Community Cultural Center Trust Fund, excluding funds from the 2004-2005 partners. In addition, all tickets purchased for events at the Carver will include a proposed \$1.00 preservation fee to offset normal wear and tear repair costs of the facility. These funds will be deposited into a Renewal and Replacement Fund and administered by the Department of Community Initiative's Fiscal Section. Carver Season ticket purchases already made were not assessed the preservation fee since the purchase of advance season tickets has already concluded. Renewal and Replacement Fund revenues are projected at approximately \$5,000 a season.

The initial management services contract began July 15, 2002 to foster and promote the dual working relationship between the City and the CDB. The management services contract in the amount of \$55,598 serves to designate responsibilities of both the City and the CDB in the areas of financial, programmatic, advisory support and authority as well as the daily management, maintenance and operation of the Carver. These responsibilities are outlined in Carver Management Services Contract. The Center's personnel complement of seven personnel remains unchanged.

Performance measures for the Fiscal Year 2005 are provided in Attachment B.

POLICY ANALYSIS

This ordinance addresses the core issue of Human Development and is a continuation of existing policy to provide for recreational and cultural events using multiple sources of revenue, to include General Funds.

The management services contract provides that the overall responsibility for management, maintenance and operation of the Carver Center is vested in the Carver Development Board's Executive Committee, which is comprised of the officers of the CDB and two ex-officio members appointed by the Department of Community Initiatives' Director. Actions are implemented through the Executive Director of the Center.

FISCAL IMPACT

Funds for artistic professional services in an amount not to exceed \$163,592 and related technical services for the 04-05 Carver season will be budgeted from the General Fund, the Carver Community Cultural Center Trust Fund account and from the Organizational Support Project, a designated fund for Community and Visitor Facilities Tax transfers and trust funds. Furthermore, authorization is sought to transfer \$154,250 from the budgeted revenue fund accounts of the Community and Visitor Facilities Fund and \$49,275 of Carver Community Cultural Center Trust Funds for a total of \$203,525. The action also accepts a contribution of \$41,500 from the CDB to augment the grant fund, bringing the total authorized budget to a total of \$245,025. All funds will be deposited and managed by the City. Attachment C details revenues and expenditures for the Organizational Support Grant Project.

With the execution of the management services contract, the City agrees to provide \$55,598 to the CDB for the management of the Carver Community Cultural Center. Attachment D outlines the three-year history of fund appropriations and budget for the actions contained above.

COORDINATION

Coordination of activities has occurred with the City Attorney's Office, Finance Department, Office of Management & Budget, Office of Cultural Affairs, Asset Management, and the Carver Development Board.

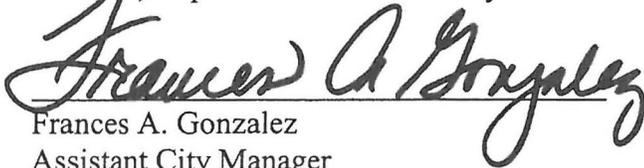
SUPPLEMENTARY COMMENTS

Attachments:

- Attachment A - Schedule of Performance Events
- Attachment B - Carver Performance Measures
- Attachment C - Carver Revenues / Expenditures Flow Chart
- Attachment D - History of Fund Appropriation
- Attachment E - Ethics Disclosure Statements:
 - Required of the Carver Development Board
 - Required of performance artists or their designated representative

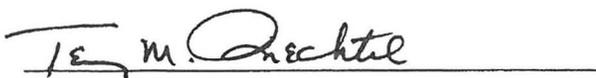


Dennis J. Campa
Director, Department of Community Initiatives



Frances A. Gonzalez
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

ATTACHMENT A

The Carver Main Stage Series (Jazz, Dance, Music & Family)

The City of San Antonio will sponsor ten of fourteen performing events. The Family Series is a new initiative providing and encouraging families to experience live performances on Saturday afternoons, beginning at 2 PM. The City of San Antonio will support the artistic fee for the performers expensed up to \$154,142. The Carver Development Board, Trinity University and the Asia India Society of San Antonio are collaborating sponsors and will pay the artistic fee of four performing events on the season exceeding \$98,000. Ticket revenues will be deposited with the City of San Antonio excluding the partnerships events with Trinity University and the Carver Development Board. Ticket revenues from the Asia India Society of San Antonio will be deposited at \$2,000 minimum. Total ticket revenues are anticipated at \$129,332.

The 2004-2005 Carver Season of Events includes the following performances:

OCTOBER			
EVENT	DATE	VENUE	DISCIPLINE
<i>Elder Statesmen of Jazz – Special Event sponsored by the Carver Development Board</i>	10/1/04	<i>Laurie Auditorium, Trinity University</i>	<i>JAZZ</i>
<i>Ragamala “From Temple to Theatre” – Special Event sponsored by the Asia India Society</i>	10/9/04	<i>Carver Theatre</i>	<i>DANCE</i>
Jason Moran and Jeri Brown	10/23/04	Carver Theatre	JAZZ
NOVEMBER			
Koresh Dance Company	11/13/04	Carver Theatre	DANCE
JazzReach “Get Hip”	11/20/04	Carver Theatre	FAMILY
DECEMBER			
Aaron Neville	12/4/04	Laurie Auditorium, Trinity University	MUSIC
<i>African American Dance Ensemble “Kwaanza” – Special Event sponsored by the Carver Development Board</i>	12/11/04	<i>Carver Theatre</i>	<i>FAMILY</i>
JANUARY			
Joe McDermott and the Smart Little Creatures “Every Where You Go”	01/29/05	Carver Theatre	FAMILY

ATTACHMENT A

The 2004-2005 Carver Season of Events CONTINUED:

FEBRUARY			
EVENT	DATE	VENUE	DISCIPLINE
Shout Sister Shout – features the Holmes Brothers, Odetta and Marie Knight	02/12/05	Carver Theatre	MUSIC
Rennie Harris Puremovement – <i>features two performance dates</i>	02/25-26/05	Carver Theatre	DANCE
MARCH			
<i>Directions in Music – features Herbie Hancock – Special Event sponsored by the Carver Development Board & Trinity University</i>	03/11/05	<i>Laurie Auditorium, Trinity University</i>	<i>JAZZ</i>
APRIL			
Ethel	04/30/05	Carver Theatre	MUSIC
MAY			
Urban Bush Women	05/06/05	Carver Theatre	DANCE

ATTACHMENT A

The Little Carver Intimate Series

The Little Carver Intimate Series was first introduced to the community in 2002, after the former Porter Memorial Christian Methodist Episcopal Church, built in 1919, was converted and conveyed to the City of San Antonio as the Little Carver Civic Center. For the 2004-2005 season, seven performance events will be held at the Little Carver Civic Center. Six artists have been contracted for the season. The City of San Antonio will support all events in the amount of \$9,450 for artistic fees with anticipated revenues budgeted at \$11,706. All ticket revenues will be deposited with the City of San Antonio.

The 2004-2005 Little Carver Intimate Series includes the following performances:

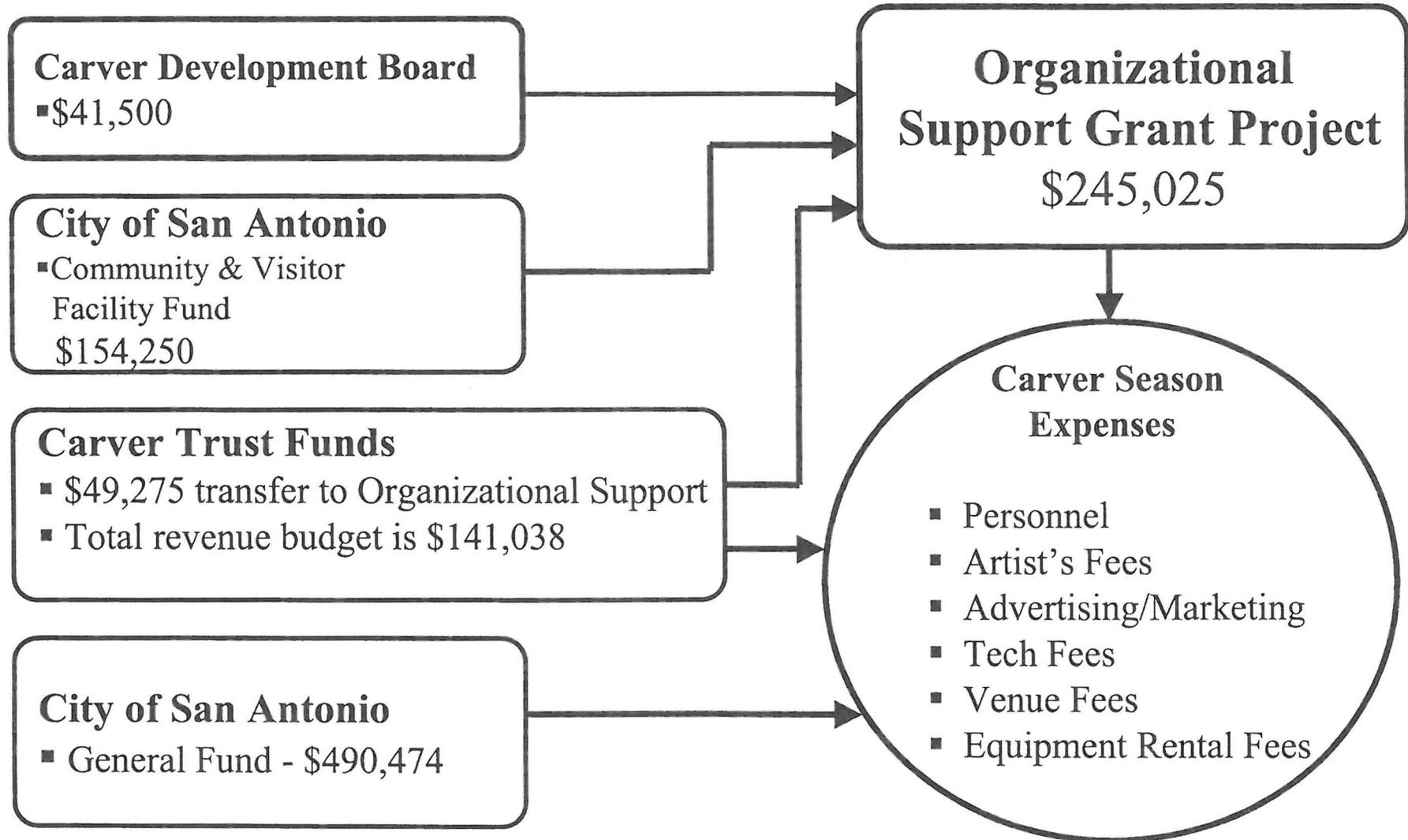
NOVEMBER		
EVENT	DATE	VENUE
Viva Tango Orchestra "Cantos Y Palabras"	11/05/04	Little Carver Civic Center
The Metta Quintet "Going to Meet the Man"	11/19/04	Little Carver Civic Center
DECEMBER		
E Muzeki	12/10/04	Little Carver Civic Center
APRIL		
The Avanti Quartet "A Classical Twenty-Something"	4/01/05	Little Carver Civic Center
Fathers and Sons	4/15/05	Little Carver Civic Center
MAY		
Ruby Nelda Perez "Dona Rosita's Jalapeño Kitchen" – <i>features two performance dates</i>	5/13-14/05	Little Carver Civic Center

ATTACHMENT B

The Carver performance measures are reflected in the table below:

Accountability Measures	Actual FY 02/03	Actual FY 03/04	Proposed FY 04/05
No. of Carver Season Events	14	9	11
No. of Intimate Series Events	4	7	7
No. of Youth Matinees	12	8	8
Season Event Attendance	5,817	7,217	6,271
Intimate Series Attendance	480	756	1,190
Youth Matinee Attendance	4,728	6,422	4,680

Carver Community Cultural Center Season Revenues and Expenditures for FY 2004-2005



ATTACHMENT D

A. The authorization to transfer from the budgeted revenue fund accounts (Hotel/Motel and Carver Trust) in the amount of \$203,525, managed by the City, will be deposited and managed in a grant, known as the Organizational Support Project.

The following information provides a three-year history of funds appropriated for artistic fees.

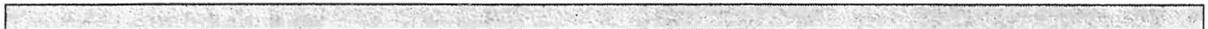
Artist's Fee Expenditures	Actual FY 02/03	Actual FY 03/04	Proposed FY 04/05
General Fund	\$150,000.00	\$150,000.00	\$150,000.00
Organizational Support Project	-0-	-0-	-0-
Carver Trust Fund Account	32,680.00	28,500.00	13,592.00
Total	\$182,680.00	\$178,500.00	\$163,592.00



B. The action to accept the financial contributions from the Carver Development Board in the amount of \$41,500 does not impact the General Fund. The authorized budget for the Organizational Support Project managed by the City is proposed at \$245,025. This grant project authorizes seven full-time staff positions, currently five are filled.

The following information provides a three-year history of funds appropriated for the Organizational Support Project.

Organizational Support Project	Actual FY 02/03	Actual FY 03/04	Proposed FY 04/05
Revenue Accounts			
Hotel / Motel Tax Fund	\$154,250.00	\$154,250.00	\$154,250.00
Carver Cultural Center Endowment	20,000.00	-0-	-0-
Carver Cultural Center Trust Fund	63,148.00	40,589.00	49,275.00
Sub-Total	<u>\$237,398.00</u>	<u>\$ 194,839.00</u>	<u>\$ 203,525.00</u>
Carver Development Board (CDB)	-0-	41,000.00	41,500.00
Total	\$237,398.00	\$235,839.00	\$245,025.00



C. With the execution of the management services contract, the City agrees to provide \$55,598.00 to the CDB for the management of the Carver Community Cultural Center, as budgeted from Fees to Professional Contractors from the Carver's General Fund.

The following information provides a two-year history of funds appropriated for the Management Services Contract, as well as proposed funding for FY 2004-2005.

Management Services Contract	Actual FY 02/03	Actual FY 03/04	Proposed FY 04/05
Fees to Professional Services-CDB	\$52,728.00	\$55,598.00	\$55,598.00

**CITY OF SAN ANTONIO
DEPARTMENT OF COMMUNITY INITIATIVES**

CARVER COMMUNITY CULTURAL CENTER

ETHICS DISCLOSURE STATEMENTS

**Carver Development Board
Carver Season Performing Artist's**