RR
02/18/16
Item No. 26

AN ORDINANCE 2016-02-18-0111

APPROVING THE FISCAL YEAR 2016 ECONOMIC DEVELOPMENT SERVICES AGREEMENT IN THE AMOUNT OF $590,000.00 WITH THE SAN ANTONIO ECONOMIC DEVELOPMENT FOUNDATION.

* * * * *

WHEREAS, in 2008, the City of San Antonio (the "City") initiated efforts to enhance its focus on corporate retention and recruitment by creating a Corporate Retention and Recruitment Committee (the "Committee") whose charge was to develop a comprehensive and inclusive plan for the strategic development of San Antonio's economy, with a narrowed focus on developing recommendations for an enhanced economic development structure and workflow and the requirement for a community-wide long range vision and strategic plan; and

WHEREAS, the Committee's recommendations were presented and accepted by the City Council on December 10, 2009 and City staff was directed to begin implementation of the recommendations which included entering into an agreement with the San Antonio Economic Development Foundation (the "EDF"), a private, non-profit organization that assists business and industry relocating or expanding into the San Antonio area; and

WHEREAS, based upon the Committee's recommendations the City entered into a five-year agreement with EDF which expired in 2015; and

WHEREAS, the City and EDF have agreed to continue the agreement on a year-by-year basis to provide for defined services that could be negotiated on an annual basis; **NOW THEREFORE**:

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

SECTION 1. The terms and conditions of an Economic Development Services Agreement for Fiscal Year 2016 with the San Antonio Economic Development Foundation are approved. The City Manager or her designee, is authorized to execute the Agreement, a copy of which, in substantial final form, is attached as Exhibit A. The final agreement shall be attached to this ordinance upon execution by all parties.

SECTION 2. Funding in the amount of $590,000.00 for this Ordinance is available in Fund 9059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2016 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to be made to the San Antonio Economic Development Foundation and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP

Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED THIS 18TH DAY OF FEBRUARY 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**26 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 30A, 30C, 30D, 30E, 30F)**
Date:	02/18/2016
Time:	10:40:05 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving the Fiscal Year 2016 San Antonio Economic Development Foundation for Economic Development Services Agreement in the amount of $590,000.00. [Carlos Contreras, Assistant City Manager; Rene Dominguez, Director, Economic Development]
Result:	Passed

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

Exhibit A

SERVICES AGREEMENT BETWEEN THE ECONOMIC DEVELOPMENT FOUNDATION AND THE CITY OF SAN ANTONIO

The City Council of the CITY OF SAN ANTONIO, TEXAS, a municipal corporation (the "***City***"), has approved the City's engagement of the SAN ANTONIO ECONOMIC DEVELOPMENT FOUNDATION ("***EDF***"), a Texas non-profit corporation, to provide the "***Services***" (as defined below) set forth in this Services Agreement ("***Agreement***").

RECITALS

WHEREAS, in 2008, as part of an effort to improve corporate retention and recruitment, the City formed a Corporate Retention and Recruitment Committee (the "***Committee***") to develop a plan for the strategic development of San Antonio's economy, with a narrowed focus on developing recommendations for a more robust economic development structure that included a community-wide, long-range vision and strategic plan; and

WHEREAS, the Committee's recommendations were presented to and accepted by the City Council on December 10, 2009; and

WHEREAS, the goals desired to be achieved by implementing the recommendations of the Committee include (i) having a long-range vision and strategic plan, the development of which is led by the City's Mayor, that provides a systematic approach to retention and recruitment in the City; (ii) developing strategies to improve the recruitment and retention of targeted industries identified by the City; (iii) improving coordination and collaboration among key City constituents and stakeholders (public and private) in executing economic development initiatives; (iv) working with relevant business organizations, like Chambers of Commerce, to develop and coordinate a retention and expansion program for existing companies within the San Antonio area; and (v) by recommending to the City strategies for improving resource utilization, including using increased levels of incentives for new prospects that are aligned with the City's strategic intent; and

WHEREAS, the goals above were satisfactorily met with areas of emphasis cited by the completed strategic plan identified as follows: (iii) improving coordination and collaboration among key City constituents and stakeholders (public and private) in executing economic development initiatives; and (v) recommending to the City strategies for improving resource utilization, including using increased levels of incentives for new prospects that are aligned with the City's strategic intent; and

WHEREAS, City staff was directed to begin efforts toward implementation of the recommendations, including entering into an agreement with a third-party contractor to provide certain defined services for the City, including services relating to business recruiting and retention, image building, and market research functions; and

WHEREAS, EDF is a private, non-profit organization that assists business and industry relocating or expanding into the San Antonio area; and

WHEREAS, EDF is a respected leader in the highly-competitive industry of corporate recruitment, whose activities and services include labor market analysis, direct marketing, site

selection, market research assistance, and other economic development activities; and

WHEREAS, EDF has achieved significant success in providing services similar to the Services to its other constituents; and

WHEREAS, pursuant to this Agreement, the City is engaging EDF to perform the Services (as defined below); and

WHEREAS, EDF's provision of the Services is expected contribute to the achievement of the goals stated above; and

WHEREAS, the City understands the importance to the EDF mission, especially in the area of recruiting new business to the San Antonio area, of maintaining a high level of confidentiality, and accepts that much of the information pertaining to prospects who are considering a location here is private and proprietary, and must be protected, and the City will work with EDF to maintain that confidentiality; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and EDF agree as follows:

I. TERM

1.1 Term. The term of this Agreement shall commence on October 1, 2015, and will remain in full force and effect through September 30, 2016 ("***Term***") unless sooner terminated, as provided below.

II. SCOPE OF SERVICES

2.1 Services for Compensation. EDF agrees to provide the services described below in exchange for the compensation described hereafter (as listed in Section 2.2, the "***Services***"). City acknowledges that EDF contracts with various entities and organizations unaffiliated with City, and that under those agreements EDF may perform services and activities in areas outside the San Antonio Region (that Region is as shown on the attached **Exhibit "A"**). However, the parties have agreed that funds provided by City through this Agreement will be used for activities within the city limits of the City and its extraterritorial jurisdiction.

2.2 Scope of Services. EDF shall work to increase the number and quality of jobs and capital investment to the San Antonio Region, and to coordinate a local business retention and expansion ("***BRE***") program. EDF shall, subject to being supplied the appropriate funding pursuant to Section 3.2:

(A) Act as the implementing body for economic development tactics in the area of Targeted Industry recruitment, retention/expansion and collaboration and carry out the actions defined in Exhibit B related to marketing, recruiting, retaining and expanding existing businesses in Targeted Industries, excluding retail businesses.

(B) Act as the convening body for economic development tactics in the area of Targeted Industry recruitment, retention/expansion, entrepreneurial development, workforce development, and collaboration as detailed in Exhibit A

2.3 Strategic Plan Implementation Agreement

a. Development. Within sixty (60) days of the execution of this Agreement, EDF shall request any necessary updates to the methodology and steps expected to be followed by EDF to deliver the Services within the specified fiscal year, and shall include a budget that indicates in appropriate detail how the funding provided by the City for that fiscal year will be expended. The City and EDF shall work jointly to finalize the draft Strategic Plan Implementation Agreement, and each shall submit the draft Strategic Plan Implementation Agreement to its governing board or appropriate sub-committee for approval. After approval by each respective board or sub-committee, the Strategic Plan Implementation Agreement shall become incorporated into this Agreement as **Exhibit "B."** The parties understand that circumstances during any period of time may differ from those contemplated when an Strategic Plan Implementation Agreement is established; however, any material changes to the approved Strategic Plan Implementation Agreement must be approved in writing by EDF and City.

b. Strategic Plan Implementation Agreement Performance Targets. As part of the development of each Strategic Plan Implementation Agreement, the City and EDF shall establish "Performance Targets" against which EDF's execution of the Strategic Plan Implementation Agreement is evaluated. If there are changing market conditions, funding availability issues, unforeseen expenses, or other circumstances beyond EDF's reasonable control, then the then current Performance Targets may be revised, with the City's written approval.

c. Reporting. EDF will maintain reasonable levels of communication with the City staff throughout the term of this Agreement. EDF shall provide, upon reasonable request, reports to the City discussing in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters) its progress in implementing the Strategic Plan Implementation Agreement and meeting Performance Targets, as specified in this Agreement, as well as reporting on any activity that EDF believes to be of interest to the City. EDF agrees to report to City as follows:

(i) a monthly status report, which shall be provided during a monthly meeting, informally and orally to staff;

(ii) provide a quarterly digital Excel file with all details of any reported aggregated metrics to include data fields requested by City staff based on reported activities.

(iii) quarterly and annual written status reports and general accountings, and

(iv) on reasonable request of the City, periodic update presentations that address the Services provided pursuant to this Agreement.

EDF's need and desire to provide confidentiality shall take priority over any specific request for information made by the City.

2.4 City's Satisfaction. All work performed by EDF hereunder shall be performed to the reasonable satisfaction of the City. City shall have the right to terminate this Agreement, in accordance with Article VII entitled "Termination," in whole or in part, if EDF's work is not satisfactory to City, as determined by the City in its discretion.

III. COMPENSATION TO EDF

3.1 Compensation. As compensation for the Services, the City shall pay to EDF the sum of FIVE HUNDRED AND NINETY THOUSAND DOLLARS AND ZERO CENTS ($590,000.00), payable in advanced in quarterly installments of $125,000.00. The initial advance payment, and all other payments, shall not be due or owed until the occurrence of all of the following:

(A) execution of this Agreement by both City and EDF; and

(B) execution of a Consulting Agreement between EDF and Hiroyuki Watanabe (a.k.a Texas Japan Office) in the amount of at least $90,000; and

(C) upon EDF's submission to the City of an invoice in the amount of $215,000.00, which shall represent the City's quarterly installment $125,000 and an additional $90,000.00 applied by EDF to costs associated with the Consulting Agreement described in 3.1(C) above.

The first quarterly installment will be due upon EDF meeting all obligations described above, the second and subsequent payments will be due upon submission of an invoice and the quarterly report as required by Section 2.3 (c) iii. As compensation for the Services for the City's fiscal year in which this Agreement is entered into, the City shall pay EDF a prorated amount of annual compensation based on the ratio of number of days from the execution date of this Agreement to 365, beginning on October 1 and concluding on September 30. Further, to initiate EDF's efforts, and as an agreed exception to the "in arrears" arrangement, the City shall make an initial advance payment of $125,000.00 to EDF which shall be credited against the first full quarterly amount due pursuant to this Article III.

No additional fees or expenses of EDF shall be charged by EDF nor be payable by the City for the Services provided under this Agreement. The parties hereby agree that all expenses of EDF that are compensable by the City have been provided for in the total payment to EDF. Those total payments cannot exceed the amount set forth above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council's passage of an ordinance.

3.2 Use of Funds. The funding provided by the City under this Agreement shall be used solely in connection with EDF's providing the Services described in Article II, pursuant to the budget prepared as part of the approved Strategic Plan Implementation Agreement. EDF shall segregate all funds provided under this Agreement into a separate account and shall not commingle any funds supplied by the City with the EDF's general funds or other funds received by any other entity.

3.3 Additional Services. Should any additional services outside the scope of this

Agreement be requested and authorized by the City, and accepted by EDF, EDF shall be separately compensated for those services over and above the compensation discussed in this Article III, at an amount agreed to by the City and EDF.

3.4 Invoices. EDF shall submit City invoices to:

The City of San Antonio
Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

IV. AUDIT

4.1 EDF's Audit. In accordance with its standard practices, EDF shall obtain an audit conducted by an independent auditing firm annually during the Term of this Agreement. The audit shall include an audit of the separate account maintained to receive and disburse funds provided by the City to EDF pursuant to this Agreement. A copy of the Audit Report and Management Letter prepared as a result of the audit shall be provided to City.

4.2 City's Audit. The City or its authorized representative shall at all reasonable times, on five business days' prior written notice, have the right to examine, inspect, and audit all books, papers, and bank records of EDF directly related to the funds provided to EDF under this Agreement, to determine the accuracy of reports made under this Agreement. The cost and expenses incurred by the City incident thereto shall be the sole responsibility of and borne by the City. Those records shall be maintained by EDF for a period of four (4) years after the termination of the Initial Term of this Agreement and any applicable Renewal Term, and shall be made available for inspection and/or audit by the City or its agents at EDF's facility. Nothing in this Agreement shall be deemed to give the City authority to direct, question, review, audit, or otherwise influence the expenditure of any funds that are not directly paid to EDF by the City.

4.3 Dispute Findings. Either EDF or the City may dispute the findings of audits performed under this Agreement, by giving written notice to the other party within thirty (30) days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

4.4 Scope. The City recognizes that EDF provides services to various entities and organizations unaffiliated with City and City's interest in EDF's activities is solely based upon the Services provided pursuant to this Agreement. Therefore, any audits, reports or information requested by City are understood to be limited in scope to the funding provided to EDF by City under the terms and conditions of this Agreement; provided, however, that no audit pursuant to this Article IV will identify any potential prospect or company by name or in enough detail for the identity to be discovered, nor shall any audit reveal or disclose any of EDF's proprietary information or trade secrets.

V. DOCUMENTS

5.1 Documents. **The parties recognize that, to be successful, EDF depends on its ability to keep confidential the identity of its prospects and other proprietary information, and that EDF would not be achieve the same level of results from providing the Services, or any other services to its other clients and constituents, without being able to maintain that confidentiality. Accordingly, the parties acknowledge that certain writings, documents or information produced by or submitted to EDF in the course of its execution of the Services will be the sole property of EDF, are proprietary, and may be privileged under State law. Without waiving any available claim or privilege, EDF will in good faith share information derived from those writings or documents with City and, if any writings, documents or information are deemed non-proprietary or privileged, provide copies of those writings or documents to City. EDF understands and acknowledges that the City has the right to use those non-proprietary writings, documents and information as City desires, without restriction. If any "open records" or equivalent request is made of the City relating to this Agreement or the Services, the City shall promptly advise EDF, and the parties shall work cooperatively and in good faith to preserve EDF's trade secrets, proprietary documents, and confidential information. In all events**, the City shall not provide any information or documents that EDF considers proprietary to any third party without EDF's written consent, unless the City is legally obligated to do so and so advises EDF in writing. In addition, any third-party requests to EDF for records relating to this Agreement under the State's Public Information Act shall be coordinated with City. City shall provide EDF, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the Attorney General.

5.2 Documents to City. Upon expiration or termination of this Agreement, EDF shall transfer to City true and correct copies of any non-proprietary writings, documents or information in the possession of EDF and produced pursuant to the terms and conditions of this Agreement.

VI. RECORDS RETENTION

6.1 Records. EDF and its subcontractors, if any, shall take commercially reasonable care in their maintenance of all documents, papers, and records, and other evidence pertaining to the Services and funding provided for in this Agreement, and shall make such documents available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period for purposes of the audit described in Article IV.

6.2 Retention. EDF shall retain any and all documents produced as a result of services or funding provided hereunder for a period of four (4) years from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, EDF shall retain the records until the resolution of such litigation or other such questions.

VII. SUSPENSION/TERMINATION

7.1 Suspension. The City may summarily suspend this Agreement if it reasonably believes that EDF has breached this Agreement in any material way, including by violating any City, State or Federal laws. The City shall promptly apprise EDF of the basis of the City's reasonable belief. Any such suspension shall remain in effect until the City determines that appropriate measures have been taken to ensure EDF's future compliance. Grounds for such suspension include, but are not limited to the following:

7.1.1 Failure to abide by any terms or conditions of this Agreement;

7.1.2 Failure to keep and maintain adequate proof of insurance as required by this Agreement;

7.1.3 The commission or alleged commission of any crime by EDF, or any owner, part owner, partner, business associate, principal party, officer, or director.

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

7.3 Termination Without Cause. This Agreement may be terminated by either party upon sixty (60) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.4 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events:

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4.2 Ceasing operations for a period of time exceeding twenty (20) days;

7.4.3 The expenditure of City funds on gratuities in the form of entertainment, gifts, or otherwise offered or given by EDF, or any agent or representative of EDF, to any officer or employee of the City, County, State or business prospect with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract.

7.5 Defaults With Opportunity for Cure. Should EDF default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of the default, specifying in detail the matter(s) in default. EDF shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If EDF fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice or adoption of a City ordinance, to terminate this Agreement in whole or in part as City deems appropriate. The following actions are defaults that may be cured by EDF:

7.5.1 Performing unsatisfactorily, in the sole discretion of City.

7.5.2 Failing to perform or failing to comply with any covenant herein required as determined by the City.

7.5.3 Bankruptcy or selling substantially all of company's assets

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

7.7 Ceasing City Activity. Upon the effective date of expiration or termination of this Agreement, EDF shall cease all work being performed by EDF or any of its subcontractors on behalf of the City.

7.8 Transition Period. Regardless of the method by which this Agreement is terminated, EDF agrees to provide a transition period of termination for a period not to exceed two (2) months upon City's request. During such transition period, EDF may continue to provide services as provided for, and for which it will be compensated, under this Agreement.

VIII. NOTICE

8.1 Written Notice. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to City:
Rene Dominguez
EDD Director
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966
Phone: 207-8080
Fax: 207 - 8151

If to EDF:
Mario Hernandez
President
Economic Development Foundation
602 E. Commerce
San Antonio, TX 78205
Phone: 226-1394
Fax: 223-3386

8.2 Time. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

IX. INSURANCE

9.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, EDF shall furnish an original completed Certificate(s) of Insurance to the City's Economic Development Department and City Clerk's Office, and which shall be clearly labeled "Economic Development Foundation" in the Description of Operations block of the Certificate. The original 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, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's Economic Development Department and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

9.3 Financial Integrity. EDF's financial integrity is of interest to the City; therefore, subject to EDF's right to maintain reasonable deductibles in such amounts as are approved by the City, EDF shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at EDF'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 A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

9.4 Copies. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). So long as this Agreement is in effect, EDF shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. EDF shall pay any costs incurred resulting from said changes.

9.5 Required Provisions. EDF agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required 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 polices;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

9.6 Cancellation/Non-Renewal. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, EDF shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if EDF knows of said change in advance, or ten (10) days after the change, if the EDF did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
International & Economic
Development Dept.
P.O. Box 839966
San Antonio, Texas 78283-3966

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

9.7 Failure to Maintain. In addition to any other remedies the City may have upon EDF'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 EDF to stop work hereunder, and/or withhold any payment(s) which become due to EDF hereunder until EDF demonstrates compliance with the requirements hereof.

9.8 Responsibility of EDF. Nothing herein contained shall be construed as limiting in

any way the extent to which EDF may be held responsible for payments of damages to persons or property resulting from EDF's or its subcontractors' performance of the work covered under this Agreement.

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

X. INDEMNIFICATION

10.1 EDF covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, and representatives of CITY, individually and 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 CITY arising out of or resulting from EDF activities under this AGREEMENT, including any acts or omissions of EDF, any agent, officer, director, representative, employee, EDF or subcontractor of EDF, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT EDF AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 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. EDF shall advise the CITY in writing within three business days of any claim or demand against the CITY or EDF known to EDF related to or arising out of EDF's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at EDF's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving EDF of any of its obligations under this paragraph.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Qualified Personnel. EDF shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of EDF.

11.2 Subcontractors. It is City's understanding, and this Agreement is made in reliance on that understanding, that EDF shall identify in its annually-submitted budget to City any subcontractors that EDF then intends to use to provide Services under this Agreement. On the approval of the annual budget, the subcontractors identified in it are deemed approved by City.

Any subcontracts that arise during the year that have an annual subcontracted value in excess of $20,000.00 and that are not included in the budget, must be approved by City.

11.3 Written Agreement. Any work or services subcontracted by EDF hereunder with an annual value in excess of $100,000.00 shall be by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of EDF. City shall in no event be obligated to any third party, including any subcontractor of EDF, for performance of services or payment of fees.

XII. INDEPENDENT CONTRACTOR

EDF and the City covenant and agree that EDF is an independent contractor and not an officer, agent, servant or employee of City; that EDF shall have control of and right to control, in its sole discretion, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and EDF; that the doctrine of respondeat superior shall not apply as between City and EDF, its officers, agents, employees, contractors, subcontractors and EDF, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and EDF. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Services to be performed by the EDF under this Agreement and that the EDF has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 City's Ethics Code. EDF 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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 The Executive Committee of the EDF shall comply with the Conflicts of Interest Policy set out in **Exhibit "C."**

XIV. LEGAL/LITIGATION EXPENSES

14.1 Litigation Against City. Under no circumstances will the funds received under this Agreement or any other funds received from City be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other governmental or public entity.

14.2 Termination. During the term of this Agreement, if EDF files and/or pursues an adversarial proceeding against the City then, at the City's option, this Agreement and all access to the funding provided for hereunder may terminate if it is found that EDF has violated this Article.

XV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and EDF, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVI. SEVERABILITY

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

XVII. LICENSES/CERTIFICATIONS

EDF warrants and certifies that, to its knowledge, EDF and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE WITH LAWS

EDF shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

XX. LAW APPLICABLE

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

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

XXI. LEGAL AUTHORITY

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

XXII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

EXHIBIT A: Map of City Limits and ETJ
EXHIBIT B: Strategic Plan Implementation Agreement
EXHIBIT C: EDF Conflict of Interest Policy
EXHIBIT D: EDF Acknowledgment of Conflict of Interest Policy

XXV. ENTIRE AGREEMENT

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

SIGNATURE PAGE TO SERVICES AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this 10 day of February, 2016.

CITY OF SAN ANTONIO, TEXAS,

A Municipal Corporation

Sheryl L. Sculley
City Manager

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM

Martha G. Sepeda
City Attorney

SAN ANTONIO ECONOMIC DEVELOPMENT FOUNDATION
A Texas Nonprofit Corporation

Mario Hernandez
President