

AN ORDINANCE 2012-12-13-0965

AUTHORIZING AN AGREEMENT WITH LIGATURE PARTNERS FOR EXECUTIVE SEARCH SERVICES ASSOCIATED WITH THE PRE-K 4 SA INITIATIVE WITH A TERM BEGINNING ON DECEMBER 13, 2012 AND ENDING UPON COMPLETION OF SERVICES IN AN AMOUNT NOT TO EXCEED \$175,000.00; AND THE ACCEPTANCE OF A CONTRIBUTION FROM RAISE YOUR HAND TEXAS IN THE AMOUNT OF \$175,000.00 FOR THE PRE-K 4 SA INITIATIVE.

* * * * *

WHEREAS, Chapter 379A, Texas Local Government Code (the “Act”) authorizes a municipality to create a municipal development corporation to develop and implement programs for early childhood development that prepare each child to enter school and make each child ready to learn after completing the program, that provide educational services to promote literacy, and that establish math, reading, and lifelong learning skills; and

WHEREAS, the City Council (the “City Council”) of the City of San Antonio, Texas (the “City”) authorized the creation of the San Antonio Early Childhood Education Municipal Development Corporation (the “Corporation”) for the purposes of developing early childhood literacy and educational programs in accordance with the Act; and

WHEREAS, pursuant to the Act, the City called a sales tax election, held on November 6, 2012, for voter approval to levy a sales and use tax for the benefit of the Corporation; and

WHEREAS, the voters approved the imposition of a 1/8 cent sales tax, and the City Council has passed an ordinance adopting and imposing such tax on December 13, 2012; and

WHEREAS, the Pre-K 4 SA initiative requires the hiring of an Executive Director/Chief Executive Officer, two Early Childhood Center Directors and a Professional Development Director; and

WHEREAS, the City has determined that the executive positions for the Early Childhood Education Municipal Development Corporation of the Pre-K 4 SA Initiative are critical to the development and implementation of the initiative’s programs and Centers and therefore seeks to enter into an agreement with Ligature Partners to provide executive search services for the location and recruiting of candidates to fill these executive positions; and

WHEREAS, Raise Your Hand Texas is a non-profit foundation that supports education initiatives across the state and has offered to contribute the amount of \$175,000.00 in support of the Pre-K 4 SA Initiative and its programs; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is hereby authorized to execute an agreement with Ligature Partners for executive search services for the Pre-K 4 SA Initiative, with a term beginning on December 13, 2012 and ending upon completion of search services in an amount not to exceed \$175,000.00. A copy of the agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachments I**.

SECTION 2. The City Manager, or her designee, is hereby authorized to accept a contribution from Raise Your Hand Texas in the amount of \$175,000.00 in support of the Pre-K 4 SA Initiative and its programs.

SECTION 3. The City Manager or her designee is further authorized to execute any and all necessary documents to effectuate said agreement and the acceptance of funds.

SECTION 4. Funds generated by this ordinance in the amount up to \$175,000.00 will be deposited and appropriated into Fund 29102000, Internal Order 239000000001 and General Ledger 4502280.

SECTION 5. Funding for this ordinance in the amount up to \$175,000.00 is available in Fund 29102000, Cost Center 3901030001 and General Ledger 5201040 and payment is authorized to be made payable to Ligature Partners and should be encumbered by a purchase order and amends the Fiscal Year 2013 budget.

SECTION 6. 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 7. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

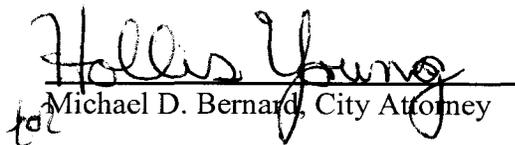
PASSED AND APPROVED this 13th day of December, 2012.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

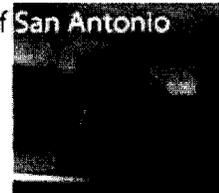
APPROVED AS TO FORM:


Michael D. Bernard, City Attorney



Request for
COUNCIL
 ACTION

City of San Antonio



Agenda Voting Results - 5B

Name:	5A, 5B, 5C						
Date:	12/13/2012						
Time:	09:54:26 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a contract with Ligature Partners, an executive recruiting firm selected to identify qualified candidates for executive leadership positions within the Pre-K 4 SA program, for an amount of up to \$175,000, and the acceptance of a financial contribution from Raise Your Hand Texas for an amount of up to \$175,000 to contribute to the cost of executive recruiting services.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**PROFESSIONAL SERVICES AGREEMENT
FOR
SEARCH FIRM FOR EXECUTIVE DIRECTOR and ASSOCIATED EXECUTIVE
POSITIONS FOR PRE-K 4 SA INITIATIVE**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its Deputy City Manager, or his designee, and Ligature Partners, having its principal place of business at 60 Ship Street, Providence, Rhode Island (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“Manager” shall mean the Deputy City Manager for the City of San Antonio, or his designee.

II. TERM

2.1 The term of the contract shall commence upon execution of contract by the last party to sign, and shall terminate upon completion of all services described herein.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.2 The Consultant shall provide all services as set forth in Consultant's Proposal attached hereto Exhibit "A" and incorporated by reference herein. The Consultant understands and agrees that Exhibit "A" is a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the Consultant as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this Agreement.

3.3 The terms of this Agreement shall control where there is any conflict between the terms of the Consultant's Proposal and the terms of this Agreement.

3.4 Consultant shall work with the Manager or designee and appropriate City officials to perform any and all related tasks required by the City in order to fulfill the purpose of this Agreement. Ardith Meyers will manage and serve as the primary consultant for the services to be performed under this Agreement. City is an Equal Opportunity Employer and does not discriminate. Consultant shall conduct all activities in accordance with this and all applicable federal, state and local requirements.

3.5 The Consultant shall provide professional search services, including, but not limited to the following:

- 3.5.1 All positions will be recruited as set out within this agreement. Consultant will conduct a phased approach to the identified positions with an emphasis on the Executive Director/Chief Executive Officer (CEO) position. Consultant understands that after a selection is made for the Executive Director/CEO position, the selected CEO will be included in the review and input process for the remaining three positions (two Early Childhood Center Directors and one Professional Development Director).
- 3.5.2 Conduct a detailed needs assessment with key City leaders, staff, and identified stakeholders; compile resulting information and develop common themes; probe for key characteristics and personality traits, background and management style determined to be important for each identified position.
- 3.5.3 Develop detailed recruitment profiles and position descriptions, and conduct an aggressive national outreach effort to identify and recruit outstanding candidates.
- 3.5.4 Conduct preliminary screening of applicants to provide an independent and objective assessment of the qualifications and suitability of candidates for the position; conduct interviews, in-depth reference and background checks of those candidates deemed most qualified based on the candidate profile.

3.5.5 Provide weekly progress reports to key City staff on status of search and prospective candidates. Prepare a detailed written report recommending five (5) to seven (7) finalist candidates for each position for further consideration. Include in the written report and executive summary, detailed resumé, comprehensive references, and profile results. Consultant shall provide the report related to the Executive Director/CEO search no later than 60-days after execution of this contract, unless otherwise mutually agreed between the parties, and reports for the remaining three positions by a mutually agreed upon date(s). By such mutual agreement, the parties may establish other deadlines for the services to be rendered under Article III.

3.5.5 Provide assistance to the City as needed during the final interview process.

3.5.6 Provide assistance to the City with the negotiation process of the selected candidate and professionally and positively communicate to candidates not selected for the position.

3.6 Consultant shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

3.7 Service Guarantee

3.7.1 Consultant shall continue fulfilling terms of Agreement as provided for in Scope of Services until City makes a final candidate selection.

3.7.2 Consultant shall not recruit the selected candidate for other positions without City's permission within two years of the commencement of the selected candidate's employment with the City.

3.7.3 Consultant guarantees that, if in the first twenty-four (24) months of employment, the hired candidate leaves City for any reason (whether of the candidate's own accord or at the City's request) Consultant will re-launch a search for a new candidate, under the original position specifications, and proceed with the services under Article III, entitled Scope of Services, for no additional professional fee. City will reimburse Consultant for reasonable recruiting expenses only.

3.8 All work performed by Consultant hereunder shall be performed to the satisfaction of Manager. The determination made by Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be

satisfactory to Manager; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the Deputy City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant a professional fee of ONE HUNDRED SEVENTY FIVE THOUSAND AND NO/100THS (\$175,000.00) The professional fee shall be equivalent to 29% of the successful candidates' annual cash compensation, and as such, the professional fee above may be reconciled upon the successful closing of all searches covered by this Agreement as either a credit or bill.

4.2 Expense Reimbursement.

4.2.1 Reasonable and necessary expenses are those identified in Consultant's Proposal and incurred in performance of the work under this Agreement. These expenses will be reimbursed upon receipt and review by Manager of an itemized bill or statement. Manager may demand satisfactory proof of Consultant's expenditure and shall only be obligated to reimburse if satisfied, in her sole discretion, that the expense was incurred, and that it was reasonable. Consultant may, but is not required to, request an advanced determination from Manager prior to incurring the expense. Failure to do so, however, will be at Consultant's sole risk. Note that first class air travel shall not be considered reasonable.

4.2.2 Reasonable and necessary travel expenses for candidates interviewed by City for the four positions outlined in Section 3.5.1 will be paid directly by City, not through Consultant. Candidate travel expenses will not be included in the professional services fees provided in Section 4.1, however, all such travel shall be approved in advance by City.

4.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 and 4.2 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved as provided in Article XVI, entitled Amendments.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Manager. Payment will be made to Consultant following written approval of the final work products and services by Manager. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

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

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

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

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

7.2 Termination without Cause. This Agreement may be terminated by City upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 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, for a material breach of this Agreement.

7.4 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.

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

7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

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

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in

writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

CITY

City of San Antonio
City Manager's Office
Attention: Peter Zanoni
P .O. Box 839966
San Antonio, TX 78283-3966

CONSULTANT

IX. CONFIDENTIAL WORK

9.1 No reports, information, evaluation, data or any other documentation developed by, given to, prepared by, or assembled by the Consultant under this Contract shall be disclosed or made available to any individual or organization by the Consultant without express written approval of the City.

9.2 The Consultant shall establish a method to secure the confidentiality of records and information that the Consultant may have access to, in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the City's or its authorized representatives' right of access to records or other information under this Contract.

9.3 If the Consultant receives inquiries regarding documents within their possession pursuant to this Contract, the Consultant shall immediately forward such request to the City for disposition.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Human Resources Department, which shall be clearly labeled "Executive Search – Pre-K 4 SA" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved

by the City’s Human Resources Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

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

10.3 The Consultant’s financial integrity is of interest to the City. Therefore, subject to the Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, the Consultant shall procure, pay for and maintain in full force and effect for the term of this Agreement, including any extensions or renewals hereof and at Consultant’s sole expense, insurance coverages 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. Broad form 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 f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto, as they apply to the limits required

by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

10.5 The Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.6 The Consultant shall, within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract. All notices shall be given to the City at the following address by certified mail:

City of San Antonio
 City Manager's Office
 Attention: Peter Zanoni
 P .O. Box 839966
 San Antonio, TX 78283-3966

and

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

10.7 If Consultant fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance and deduct and retain the amount of the premium for such insurance from any sums due under the Contract; however, procurement of said insurance by the City is an alternative to the other remedies the City may have and is not the exclusive remedy for failure by the Consultant to maintain said insurance or secure such endorsement(s). In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsement to the

extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

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

10.9 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City for liability arising out of operations under this Contract.

10.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract.

10.11 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the 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 the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, 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 CONSULTANT 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

REJECTION OF LIMITATIONS OF LIABILITY. ANY TERM OR CONDITION IN ANY DOCUMENT FURNISHED BY CONSULTANT, INCLUDING EXHIBIT A, CONSULTANT'S PROPOSAL, ATTEMPTING TO LIMIT CONSULTANT'S

LIABILITY SHALL BE OF NO FORCE OR EFFECT, AND SHALL BE STRICKEN FROM THE CONTRACT DOCUMENTS AS IF NEVER CONTAINED THEREIN.

11.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant 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 Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant does not intend to use subcontractors in the performance of this Agreement. In the event that Consultant determines that the use of subcontractors is necessary, a list of subcontractors must be provided to City for review and approval. City reserves the right to decline to allow the use of subcontractors in the provision of services for this Agreement. If subcontractors are approved, any deviation from the submitted subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor. Notwithstanding the foregoing, changes may be made to

Consultant's SBEDA Plan with the written approval of Manager and City's SBEDA Program Manager, without requiring additional approval of the City Council, regardless of whether a subcontractor listed on that plan is also identified in this paragraph.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only 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 Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control 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 consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. 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 Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. RESERVED

XV. CONFLICT OF INTEREST

15.1 Consultant 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.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XVI. 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 Consultant. Deputy City Manager shall have authority to execute amendments on behalf of the City. However, any amendment that causes this Agreement to exceed \$50,000, requires approval of the San Antonio City Council. All amendments are subject to and contingent upon appropriation of funds for any expenditures.

XVII. 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.

XVIII. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant 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.

XIX. COMPLIANCE

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

XX. 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. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 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.

21.2 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.

XXII. LEGAL AUTHORITY

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

XXIII. 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.

XXIV. 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.

XXV. 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, with this document taking priority over all exhibits: Exhibit A - Consultant's Proposal

XXVI. 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 XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

Ligature Partners

(Signature)

(Signature)

Printed Name: Peter Zanoni

Printed Name: _____

Title: Deputy City Manager

Title: Managing Partner

Date: _____

Date: _____

Approved as to Form:

City Attorney

Pre-K 4 SA

Board Appointments, Executive Recruiting Firm Contract & Imposing the Tax

Peter Zanoni, Deputy City Manager

December 13, 2012 City Council "A" Session



Overview

- Board appointments to Early Childhood Education Municipal Development Corporation
- Executive Recruiting Firm Contract
- Ordinance Imposing 1/8th Cent voter approved sales tax for program



Role of the Board



- Board is required by State enabling legislation for the Pre-K 4 SA program

Board of Directors will be charged with:

- Overseeing initiative's implementation
- Adopting annual operating budgets
- Assisting selection of CEO to lead Pre-K 4 SA
- Creating policies for Board and Pre-K 4 SA
- Reviewing programmatic evaluations
- Advancing mission and programs of Pre-K 4 SA initiative

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Board Composition & Term



- Eleven-member Board of Directors including chairperson
- Board Members serve two year terms with no term limits
- Initial and subsequent two year terms of Board Members will be staggered so that the Board will maintain continuity and institutional knowledge



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Board Composition & Term



- Appointees of even numbered City Council Districts will serve an initial one year term
- Appointees of the Mayor and odd numbered Council Districts will serve an initial two year term
- After initial appointments, every term will begin on June 1 and end on May 31, two years later



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Recommended Appointees



Chairperson: Elaine Mendoza

- Founder, President & CEO of Conceptual MindWorks, Inc., a biotechnology and informatics company
- Serves on the Board of Regents of Texas A&M University System

District 1: Dr. Richard Middleton

- Former Superintendent of NEISD from 1990-2011
- Current member of College Board as Vice President for Southwestern Region Office



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Recommended Appointees



District 2: Pamela Ray

- Assistant Professor & Program Director – Early Childhood and Family Studies at St. Philip's College
- Former member of City's Head Start Parent Policy Council

District 3: Major General Joe Robles

- President & CEO of USAA
- Retired Major General – US Army

District 4: Richard Perez

- CEO of the Greater San Antonio Chamber of Commerce
- Former City Council member for District 4

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Recommended Appointees



District 5: Gloria Ramirez

- Retired early childhood educator
- 29 years of experience in early childhood education in San Antonio

District 6: Dave Force

- 34 years at SeaWorld as a staff behaviorist trainer
- Interim Executive Director of San Antonio Youth Literacy, a non-profit volunteer driven organization focused on improving literacy skills of at-risk youth

District 7: Dr. John Folks

- Former Superintendent of Northside ISD 2002-2012
- Texas Superintendent of the Year 2011

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Recommended Appointees



District 8: Robert Bevard

- Principal of BB&A, a local professional development consulting firm
- Currently serves on Board of Directors for American Mensa: Development Officer

District 9: Camilla Black

- 35 years of experience with NEISD
- of which, 16 years were as an elementary school principal



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Recommended Appointees



District 10: Dr. Linda Foster

- Current High School Principal with Alamo Heights ISD (Since 1991)
- Taught graduate level classes for 28 years at UTSA and 6 years at Our Lady of the Lake



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Next Steps – Board of Directors



- Consider appointments today
- Convene for first Board of Directors meeting in January 2013
- Initial policy matters for consideration:
 - Bylaws
 - MOU with ISDs for Model Centers
 - CEO selection
 - Budget Adoption



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Executive Recruiting Firm



- Staff recommends City Council approve a contract with Ligature Partners recruiting firm
- Contract to cover recruitment of qualified candidates for 4 positions within Pre-K 4 SA:
 - Chief Executive Officer
 - Professional Development Director
 - Two (2) Model Center Directors

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RFI Process – Executive Recruiting



City used an RFI process to ensure proposals for executive recruiting firms came from qualified firms with experience in recruiting executives for educational institutions

- The RFI sent to 23 firms nation-wide
- The City received 5 submissions from qualified firms
- A review panel of 4 internal staff and 3 external education experts met to review submitted proposals
- Panel selected two finalists for panel interviews and selected one firm

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Executive Recruiting Firm



- The 7 member evaluation panel recommended that City pursue execution of a contract with Ligature Partners
- Key contract terms:
 - Contract amount up to \$175,000
 - A contribution will be received from Raise Your Hands Texas to pay for these recruiting services
 - » Raise Your Hand Texas is a non-profit organization focused on improving the quality of Texas public schools
- Fee for Service
 - 29% of each selected candidates initial salary
 - Plus monthly administrative fee

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Recruiting Firms Timeline & Deliverables



- Conduct a detailed needs assessment with key city leaders, staff, and identified stakeholders to develop candidate profiles for CEO, center directors and director of professional
- Develop a recruitment plan to conduct an aggressive national outreach effort to identify qualified candidates
- Goal is to hire CEO candidate by mid-March

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Imposing the Sales Tax



- On August 9, 2012 City Council ordered a sales and use tax election to utilize 1/8 cent of sales tax capacity for Pre-K 4 SA
- On November 6, 2012 voters supported proposition with 53.5% of votes “for” the imposition of the tax and 46.5% of votes “against”



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Imposing the Sales Tax



- Texas Tax Code requires that an ordinance adopting additional sales and use tax be submitted to State Comptroller so tax may be administered
- Staff recommends Council consider this ordinance imposing 1/8th cent sales tax for the Pre-K 4 SA program as previously approved by voters

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Summary & Recommendation



Staff recommends approval of the following items:

- Appointment of eleven members to the Board of Directors for the Education Corporation
- Authorize negotiation and execution of a contract with Ligature Partners for executive recruiting service
- Adopt Ordinance imposing the 1/8th cent sales tax as prior approved by voters

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Pre-K 4 SA

Board Appointments, Executive Recruiting Firm Contract & Imposing the Tax

Peter Zanoni, Deputy City Manager

December 13, 2012 City Council "A" Session

