

AN ORDINANCE 2009-12-10-1030

AUTHORIZING A CONTRACT WITH THE SAN ANTONIO EDUCATION PARTNERSHIP FOR AN AMOUNT UP TO \$1,852,952.00 FOR COLLEGE ACCESS AND SCHOLARSHIP SERVICES BENEFITING AREA HIGH SCHOOL GRADUATES FOR THE PERIOD ENDING SEPTEMBER 30, 2010.

* * * * *

WHEREAS, since 1988, the San Antonio Education Partnership (SAEP) has operated a high school success and college access program which focuses on improving high school attendance, enhancing academic performance, promoting high school graduation, increasing college enrollment and strengthening San Antonio's workforce; and

WHEREAS, during the FY 2010 budget process, City Council allocated \$1,852,952.00 in funds to support SAEP in identifying, verifying and determining scholarship eligibility for graduating seniors; and

WHEREAS, students attending the SAEP high schools who satisfy eligibility criteria will have an opportunity to receive an SAEP scholarship; and

WHEREAS, it is now necessary to authorize the execution of a contract with SAEP for outreach, eligibility determination and scholarships to graduating seniors; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Department of Community Initiatives (DCI) or his designee is hereby authorized to execute a contract with the San Antonio Education Partnership (SAEP) for payment to SAEP in an amount not to exceed \$1,852,952.00 for college access and scholarship services for a period ending September 30, 2010. A copy of the contract, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funding in the amount of \$1,852,952.00 for this ordinance is available as part of the Fiscal Year 2010 Budget per the table below:

Amount	Cost Center	General Ledger	Fund
\$239,994.00	3816070001	5201040	11001000
\$1,612,958.00	3816070001	5202020	11001000
Total Amount: \$1,852,952.00			

SECTION 3. Payment not to exceed \$1,852,952.00 is authorized to SAEP 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 immediately upon passage by eight (8) affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 10th day of December, 2009.

ATTEST:



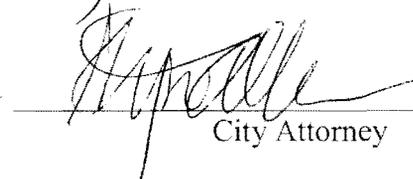
City Clerk



M A Y O R

JULIÁN CASTRO

APPROVED AS TO FORM:



City Attorney

Agenda Item:	40 (in consent vote: 7, 10, 11, 12, 16, 17, 18, 19, 20A, 20B, 21, 23, 24, 26, 27, 28, 29, 30, 35A, 35B, 38, 40, 41, 43, 44, 45, 46)						
Date:	12/10/2009						
Time:	11:23:57 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a contract with the San Antonio Education Partnership for an amount up to \$1,852,952.00 for college access and scholarship services benefiting area high school graduates for the period ending September 30, 2010. [Peter Zanoni, Interim Assistant City Manager; Dennis J. Campa, Director, Community Initiatives]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

STATE OF TEXAS	*	
COUNTY OF BEXAR	*	PROFESSIONAL SERVICES AGREEMENT
CITY OF SAN ANTONIO	*	WITH
		SAN ANTONIO EDUCATION PARTNERSHIP

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Community Initiatives pursuant to Ordinance No. _____ dated _____ and the San Antonio Education Partnership.

WITNESSETH:

WHEREAS, the Department of Community Initiatives is designated as the managing City department, and

WHEREAS, the San Antonio Education Partnership is an independent non-profit corporation incorporated under the laws of the State of Texas with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Executive Director of the San Antonio Education Partnership is authorized to act on behalf of the San Antonio Education Partnership (References to the Executive Director of the San Antonio Education Partnership are deemed to include references to such Executive Director's designee(s)); and

WHEREAS, the City has provided certain funds from the City of San Antonio General Fund Operating Budget (hereinafter referred to as "General Fund") to be used in furtherance of the activities and mission of the San Antonio Education Partnership; and

WHEREAS, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of \$1,852,952.00 (the "Total Allocation"); and

WHEREAS, of the Total Allocation, \$1,406,952.00 is earmarked to reimburse the San Antonio Education Partnership for scholarships provided for students from the City-sponsored high schools (these scholarship reimbursements collectively shall be referred to as "New School Scholarships") and \$446,000.00 is earmarked to reimburse the San Antonio Education Partnership for certain operational and administration expenses, including salaries for employees of the San Antonio Education Partnership (These reimbursement amounts collectively shall be referred to as "Reimbursements," and the amounts for which the City provides Reimbursements collectively shall be referred to as "Reimbursable Expenses"); and

WHEREAS, the City wishes to engage the San Antonio Education Partnership to carry out the Project:
NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 The San Antonio Education Partnership will provide, oversee, administer, and carry out all Project activities and services in a manner satisfactory to the City and in compliance with the mutually-agreed to Executive Summary and Balanced Scorecard Performance Plan affixed hereto and incorporated herein for all purposes as Attachments I and II.

II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2009 and shall terminate on September 30, 2010.
- 2.2 The City shall have the option to renew this Agreement for an additional period not to exceed one (1) year, subject to (a) the City's receipt of additional monies sufficient to fund the renewal term, (b) the San Antonio Education Partnership's satisfactorily meeting the performance requirements of this Agreement, as solely determined by the City and (c) the prior approval by the City Council of San Antonio of such renewal, as evidenced by an ordinance duly passed and approved.

III. CONSIDERATION

- 3.1 In consideration, the City will fund the Project through Reimbursements, as applicable, in accordance with the budget approved by City Council of San Antonio in Ordinance No. _____. Said budget is affixed hereto and incorporated herein for all purposes as Attachment III. It is specifically agreed that the Total Allocation shall not exceed the total amount of \$ 1,852,952.00.
- 3.2 The funding level of this Agreement is based on an allocation from the following funding sources:

\$ 1,852,952.00 General Fund

IV. PAYMENT

- 4.1 With respect to Reimbursable Expenses, the parties expressly agree that the City's liability hereunder is limited to making reimbursements for allowable costs incurred. In no event shall the City be liable for any cost of the San Antonio Education Partnership not eligible for reimbursement as defined within this Agreement.
- 4.2 If specific circumstances require an advance payment of a Reimbursable Expense, the San Antonio Education Partnership must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request. The Director of the Managing City Department may, in his sole discretion, approve an advance payment of a Reimbursable Expense. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, and (c) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final. For purposes of this Agreement, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:
- (A) Advance payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the San Antonio Education Partnership is notified that a check is available from the City, provided, however, that if the City makes an advance payment for an Reimbursable Expense before the amount or payee of such expense has been ascertained, the San Antonio Education Partnership shall not be required to remit such advance payment until a reasonable time after the amount and/or payee has been ascertained.
 - (B) The San Antonio Education Partnership must deposit Reimbursements (not including New School Scholarships) in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where the San Antonio Education Partnership's total deposits in said bank, including all City funds deposited in such account, exceed the FDIC insurance limit, the San Antonio Education Partnership must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by the San

Antonio Education Partnership from the San Antonio Education Partnership's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the San Antonio Education Partnership's account balance to exceed \$100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.

(C) The San Antonio Education Partnership shall deposit New School Scholarships and funds held by the San Antonio Education Partnership that are in excess of paid scholarship expenses from prior program years as set forth in Attachment IV in the account entitled "New Schools Fund". All accumulated interest or other amounts accruing to the New Schools Fund shall remain a part of the New Schools Fund. All funds in the New Schools Fund shall be used solely for the award of scholarships pursuant to this Agreement. The New Schools Fund is to be invested in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended. The San Antonio Education Partnership will submit to the Director of the Managing City Department a "New Schools Fund" investment account fund register showing the beginning balance as of October 1, 2009 and all deposits, interest income, and expense withdrawals made during the program year on an annual basis thereafter.

- 4.3 The San Antonio Education Partnership agrees to submit invoices to the Managing City Department for Reimbursable Expenses pursuant to this Agreement. The Director of the Managing City Department shall provide for review and approve for payment those reimbursable expenses that the Director of the Managing City Department determines to be allowable under this Agreement. Upon approval of the invoice by the City, the City shall pay the San Antonio Education Partnership no later than thirty (30) days after the date of such approval, provided however that such approval shall be based upon satisfactory completion of the work described in this Agreement. The question of satisfactory completion of said work shall be determined by the City alone and its decision shall be final.
- 4.4 The San Antonio Education Partnership agrees that all requests for reimbursement shall be accompanied with documentation required by the Director of the Managing City Department.
- 4.5 The San Antonio Education Partnership shall submit to City all final requests for payment no later than 45 days from the termination date of this Agreement, unless the San Antonio Education Partnership receives written authorization from the Director of the Managing City Department prior to such 45 day period allowing the San Antonio Education Partnership to submit a request for payment after such 45 day period.
- 4.6 The San Antonio Education Partnership agrees that with respect to Reimbursable Expenses, the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the San Antonio Education Partnership).
- 4.7 The San Antonio Education Partnership shall maintain a financial management system, and acceptable accounting records that provide for:
 - (A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Agreement. If accrual basis reports are required, the San Antonio Education Partnership shall develop accrual data for its reports based on an analysis of the documentation available;
 - (B) identification of the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. The San Antonio Education Partnership shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. The San Antonio Education Partnership shall maintain an accounting system that can separate funds by funding source and project;

(D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;

(E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the San Antonio Education Partnership;

(F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Section XII hereof, and the terms of the award, grant, or contract, with the City;

(G) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.8 The San Antonio Education Partnership agrees that its costs or earnings claimed under this Agreement will not be claimed under another contract or grant from another agency.

4.9 The San Antonio Education Partnership shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Project. The Cost Allocation Plan and supportive documentation shall be included in the financial statements that are applicable to the Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

4.10 Upon completion or termination of this Agreement, or at any time during the term of this Agreement, all rebates, unused funds, or credits on-hand or collected thereafter relating to the Project must immediately, upon receipt, be returned to the City.

4.11 Upon execution of this Agreement or at any time during the term of this Agreement, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review the San Antonio Education Partnership's systems of internal accounting and administrative controls prior to the release of funds hereunder. This Section 4.11 shall not be construed to grant the City, the City's Director of Finance, the City Auditor, or any person designated by the Director of the Managing City Department the power to approve (or disapprove) of the San Antonio Education Partnership's system of internal accounting and administrative controls.

V. PROGRAM INCOME

5.1 For purposes of this Agreement, "program income" shall mean earnings of the San Antonio Education Partnership realized from activities resulting from this Agreement or from the San Antonio Education Partnership's management of all funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of the San Antonio Education Partnership provided as a result of this Agreement, and payments from clients or third parties for services rendered by the San Antonio Education Partnership pursuant to this Agreement. The term "program income" shall not include any charitable contributions made by third parties to the San Antonio Education Partnership, regardless of whether such contributions are motivated by a desire to support the activities funded under this Agreement. Further, the term "program income" shall not include a payment from an independent school district to the San Antonio Education Partnership made for the purpose of funding Project activities. At the sole option of the Director of the Managing City Department,

the San Antonio Education Partnership will be required to return program income funds to City through the Managing City Department, provided, however, that upon prior written approval by the Director of the Managing City Department, the San Antonio Education Partnership may be permitted to retain such funds to be:

(A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City;

(B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.

- 5.2 In any case where the San Antonio Education Partnership is required to return program income to the Managing City Department, the San Antonio Education Partnership must return such program income to City within the timeframe that may be specified by the Director of the Managing City Department. If the Director of the Managing City Department grants the San Antonio Education Partnership authority to retain program income, the San Antonio Education Partnership must submit all reports required by the Managing City Department within the timeframe specified in the Agreement.
- 5.3 The San Antonio Education Partnership shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.
- 5.4 The San Antonio Education Partnership shall fully disclose and be accountable to the City for all program income. The San Antonio Education Partnership must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by the San Antonio Education Partnership to report program income as required is grounds for suspension, cancellation, or termination of this Agreement.
- 5.5 The San Antonio Education Partnership is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department, provided, however, that the City expressly acknowledges that the San Antonio Education Partnership participates in the City Employee Combined Campaign administered by the United Way and that the San Antonio Education Partnership solicits and receives donations from City employees during that Campaign. Nothing in this Section 5.5 shall be construed to restrict the San Antonio Education Partnership's participation in or benefit from the City Employee Combined Campaign.
- 5.6 The San Antonio Education Partnership shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF AGREEMENT

- 6.1 **THIS SECTION INTENTIONALLY LEFT BLANK**
- 6.2 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager, as representative of the City, is the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, and shall have the final authority to render or secure an interpretation.
- 6.3 The San Antonio Education Partnership shall not use funds awarded from this Agreement as matching funds for any Federal, State or local grant without the prior written approval of the Director of the Managing City Department.

- 6.4 The City shall have the authority during normal business hours to make physical inspections to the operating facility occupied to administer this Agreement and to require such physical safeguarding devices as locks, alarms, security-surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Agreement.
- 6.5 The San Antonio Education Partnership's Board of Directors and Management shall adopt and approve an Employee Integrity Policy and shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to the San Antonio Education Partnership's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said procedures shall be provided to the Managing City Department upon request by the Managing City Department.
- 6.6 The San Antonio Education Partnership agrees to comply with the following check -writing and handling procedures with respect to checks written to pay or reimburse Reimbursable Expenses:
- (A) No blank checks are to be signed in advance;
- (B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$200.00 maximum per check; and
- (C) Checks issued by City to the San Antonio Education Partnership for all reimbursable expenses shall be deposited into the appropriate bank account immediately or by the next business day after the San Antonio Education Partnership's receipt of each such check, and shall never be cashed for purposes of receiving any of the face amount back.
- 6.7 City reserves the right to request the San Antonio Education Partnership to provide additional records for long distance calls, faxes, internet service and/or cell phone calls charged to the City.

VII. AUDIT

- 7.1 If the San Antonio Education Partnership expends \$500,000.00 or more of City dollars, then during the term of this Agreement, the San Antonio Education Partnership shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of the San Antonio Education Partnership's fiscal year or termination of this Agreement, whichever is earlier. The San Antonio Education Partnership understands and agrees to furnish the Managing City Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to the Managing City Department by the San Antonio Education Partnership or within fifteen (15) days upon receipt of said report or upon submission of said corrective action plan to the auditor.
- The San Antonio Education Partnership agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the San Antonio Education Partnership or its programs of any findings about accounting deficiencies, or violations of the San Antonio Education Partnership's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within a period of ten (10) days upon the San Antonio Education Partnership's receipt of the report.
- 7.2 The San Antonio Education Partnership agrees that if the San Antonio Education Partnership receives or expends more than \$500,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (OMBA-133 revision) and the San Antonio Education Partnership shall also be required to submit copies of their annual independent audit report, and all related reports issued by the independent certified public accountant within a period not to exceed one hundred twenty (120) days

after the end of the San Antonio Education Partnership's fiscal year to the Federal Audit Clearinghouse in Jeffersonville, Indiana. The San Antonio Education Partnership may submit reports through the following website: <http://gov.fact/census.gov> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

Upon completion of Form SF-SAC, the San Antonio Education Partnership may submit the completed report by mail to:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, Indiana 47132

- 7.3 If the San Antonio Education Partnership expends less than \$500,000.00 of City dollars, then during the term of this Agreement, the San Antonio Education Partnership shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of the San Antonio Education Partnership's fiscal year or termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by the San Antonio Education Partnership attesting to the correctness of said financial statement.
- 7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.
- 7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, the San Antonio Education Partnership agrees to make available to City all accounting and Project records.

"The San Antonio Education Partnership shall during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years" or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after the termination of this Agreement, save and except there is litigation or if the audit report covering such agreement has not been accepted, the San Antonio Education Partnership shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by the San Antonio Education Partnership in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

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

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

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the San Antonio Education Partnership will immediately refund such

amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, the San Antonio Education Partnership shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. If the San Antonio Education Partnership is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. Should the City, at its sole discretion, deduct such claims from subsequent reimbursements, the San Antonio Education Partnership is forbidden from reducing Project expenditures and the San Antonio Education Partnership must use its own funds to maintain the Project.

The San Antonio Education Partnership agrees and understands that all expenses associated with the collection of delinquent debts owed by the San Antonio Education Partnership shall be the sole responsibility of the San Antonio Education Partnership and shall not be paid from any Project funds received by the San Antonio Education Partnership under this Agreement.

- 7.7 If the City determines, in its sole discretion, that the San Antonio Education Partnership is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the San Antonio Education Partnership pay for such audit from non-City resources.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

- 8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the San Antonio Education Partnership shall furnish to the Managing City Department such statements, records, data, all policies and procedures, and information and permit the City to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement.
- 8.2 The San Antonio Education Partnership shall submit to the Managing City Department such reports as may be required by the City, including Contract Monitoring Report (CMR) which is affixed hereto and incorporated herein as Attachment V. The Contract Monitoring Report (CMR) is to be submitted by the San Antonio Education Partnership no later than the 5th business day of each month. The San Antonio Education Partnership ensures that all information contained in all required reports submitted to City is accurate.
- 8.3 The San Antonio Education Partnership agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. The San Antonio Education Partnership shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, the San Antonio Education Partnership shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. The San Antonio Education Partnership shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with the San Antonio Education Partnership's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Agreement. Upon termination of this Agreement, the San Antonio Education Partnership shall return to City all copies of materials related to the Project including the Confidential Information.

8.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if the San Antonio Education Partnership receives inquiries regarding documents within its possession pursuant to this Agreement, the San Antonio Education Partnership shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, the San Antonio Education Partnership shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of the San Antonio Education Partnership's receipt of such request.

8.5 In accordance with Texas law, the San Antonio Education Partnership acknowledges and agrees that all City government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, the San Antonio Education Partnership agrees that no such City government records produced by or on the behalf of the San Antonio Education Partnership pursuant to this Agreement shall be the subject of any copyright or proprietary claim by the San Antonio Education Partnership.

The San Antonio Education Partnership acknowledges and agrees that all City government records, as described herein, produced in the course of the work required by this Agreement, shall belong to and be the property of City and shall be made available to the City during normal business hours. The San Antonio Education Partnership further agrees to turn over to City all such City records upon termination of this Agreement. The San Antonio Education Partnership agrees that it shall not, under any circumstances, release any records created solely for the City during the course of performance of the Agreement to any entity without the written permission of the Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII, section 8.3 of this Agreement.

8.6 Within a period not to exceed 90 days from the termination date of the Agreement, the San Antonio Education Partnership shall submit all fiscal reports and all required deliverables to the City Managing Department. The San Antonio Education Partnership understands and agrees that in conjunction with the submission of the final report, the San Antonio Education Partnership shall execute and deliver to City a receipt for all sums and a release of all claims against the Project.

8.7 The City acknowledges that the Board of Directors of the San Antonio Education Partnership includes two regular directors and one alternate director who are representatives of the City and that the Director of the Managing City Department is an ex-officio member of the Board of Directors of the San Antonio Education Partnership. The City further acknowledges that through their membership on the Board of Directors, these four individuals automatically receive the following information, and that receipt by these four individuals shall constitute receipt by the City:

(A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);

(B) Current Bylaws and Charter;

(C) Terms of Officers;

(D) Amendments to Bylaws;

(E) Schedule of anticipated board meetings for current Fiscal Year;

(F) Minutes of board meetings that are approved by the San Antonio Education Partnership's board will become part of the San Antonio Education Partnership's project records and as such, must be available to City staff, upon request, provided however, the San Antonio Education Partnerships shall submit to the City minutes of board meetings that are approved by the San Antonio Education Partnership's Board on a quarterly basis for contracts with the City that are in an amount of \$1,000,000.00 or greater.

(G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

8.8 The San Antonio Education Partnership agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in section 12.3 of this Agreement.

IX. INSURANCE

9.1 The San Antonio Education Partnership agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this Agreement, the San Antonio Education Partnership shall furnish an original completed Certificate(s) of Insurance to the Managing City Department. Said Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The Certificate will identify this Agreement by name or reference this Agreement. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed, transmitted or conveyed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been properly delivered to the Managing City Department. No officer or employee of the City shall have authority to waive this requirement. If the City in its sole discretion determines that the San Antonio Education Partnership is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit at the City's expense. In such an event, Contractor shall pay for such audit.
- (B) The City reserves the right to review the insurance requirements of this Article before or during the effective period of the Agreement and any extension or renewal hereof and to reasonably require modification or amendment to the insurance coverage, limits and endorsements attached thereto, when deemed necessary and prudent by the City's Risk Manager. Such modifications or amendments will be made solely for the purpose of addressing changes in statutory law, court decisions, or circumstances surrounding this Agreement.
- (C) The San Antonio Education Partnership's financial integrity is of interest to City. The San Antonio Education Partnership shall have the right to maintain reasonable deductibles in such amounts as are approved by City. The San Antonio Education Partnership shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the San Antonio Education Partnership's sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(vii) in the following types and for an amount not less than the amount listed below:

Policy Types	Amount
1. Worker's Compensation Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. 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	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Business Auto	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence, or its equivalent in Umbrella or Excess Liability Coverage.

4. Professional Liability
(Claims Made Form is acceptable)

\$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.

- (D) The City shall be entitled, upon request and without expense, to review copies of any and all policies, including current and past declaration pages, schedules and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). The San Antonio Education Partnership shall exercise every reasonable effort to accomplish such changes in policy coverages, and shall submit a copy of the replacement certificate of insurance to City at the address provided within 10 days of the requested change. The San Antonio Education Partnership shall pay any cost incurred resulting from said changes.

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

- (E) The San Antonio Education Partnership 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 and its officers, employees, volunteers and elected representatives as additional insurers 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 policy 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.
- (F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, San Antonio Education Partnership shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend San Antonio Education Partnership'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 the Agreement.
- (G) In addition to any other remedies the City have upon San Antonio Education Partnership'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 San Antonio Education Partnership to stop work hereunder, and/or withhold any payment(s) which become due to San Antonio Education Partnership here under until San Antonio Education Partnership demonstrates compliance with the requirements hereof.

- (H) Nothing herein contained shall be construed as limiting in any way the extent to which the San Antonio Education Partnership may be held responsible for payments of damages to persons or property resulting from the San Antonio Education Partnership or its subcontractors' performance of the work covered under this Contract.
- (I) It is agreed that San Antonio Education Partnership'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.
- (J) It is understood and agreed that the insurance required is an addition to and separate from any other obligation contained in this Agreement.
- (K) San Antonio Education Partnership and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 THE SAN ANTONIO EDUCATION PARTNERSHIP AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

(A) The San Antonio Education Partnership 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 or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to the San Antonio Education Partnership's activities under this Agreement, including any acts or omissions of the San Antonio Education Partnership, any agent, officer, director, representative, employee, consultant or subcontractor of the San Antonio Education Partnership, 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 THE SAN ANTONIO EDUCATION PARTNERSHIP AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

(B) The provisions of this INDEMNIFICATION 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.

(C) The San Antonio Education Partnership shall promptly advise the CITY in writing of any claim or demand against the CITY or the San Antonio Education Partnership known to the San Antonio Education Partnership related to or arising out of the San Antonio Education Partnership's activities under this Agreement.

XI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) AND RELATED POLICIES

11.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Contract:

- (A) SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- (B) Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- (C) Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.
- (D) SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Contractor's bid for this project Contract, attached hereto and incorporated herein as "Attachment VI".

11.2 For this Contract, the Parties agree that:

- (A) The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Contract by reference; and
- (B) The failure of Contractor or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Contract.
- (C) Failure of Contractor or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Contract.
- (D) During the term of this Contract, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Contractor's SBEDA Plan ("Attachment VI") shall constitute a material breach of the SBEDA Program and this Contract.
- (E) Contractor shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment VI") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Contractor to the City's Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Contract.

11.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Contract:

- (A) Failure of Contractor to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Contract, or failing to allow such SE to perform a Commercially Useful Function; or

- (B) Modification or elimination by Contractor of all or a portion of the scope of work attributable to an SE upon which the Contract was awarded; or
 - (C) Termination by Contractor of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Contract without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
 - (D) Participation by Contractor in a Conduit relationship with an SE scheduled to perform work that is the subject of this Contract.
- 11.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Contract for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Contractor materially breaches the requirements of the SBEDA Program:
- (A) Terminate this Contract for default;
 - (B) Suspend this Contract for default;
 - (C) Withhold all payments due to the Contractor under this Contract until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
 - (D) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Contract, or from any other amounts due to the Contractor under the Contract.
 - (E) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 11.5 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Contract.
- 11.6 The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 11.7 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Contract. If the recommended remedy is to terminate the Contract, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

11.8 Special Provisions for Extension of Contracts. In the event the City extends this Contract without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Contract shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (A) a SBEDA Utilization Goal for the extended period; and
- (B) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Contractor does not meet the SBEDA Utilization Goal; and
- (C) the required minimum Good Faith Efforts outreach attempts that Contractor shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Contract extension document. The Contractor entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 - (i) subject Contractor to any of the remedies listed above; and/or
 - (ii) result in a new bid or proposal request of the Contract that was considered for extension.

XII. APPLICABLE LAWS

12.1 The San Antonio Education Partnership certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the San Antonio Education Partnership to suspension of payments, termination of Agreement, and debarment and suspension actions.

12.2 The San Antonio Education Partnership understands that certain funds provided pursuant to this Agreement are funds that have been made available by the City's General Operating Budget. Consequently, the San Antonio Education Partnership agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by the San Antonio Education Partnership hereunder as directed by the City or as required in this Agreement. In addition the San Antonio Education Partnership shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable to the funds received by the San Antonio Education Partnership hereunder:

- (A) OMB Circular A-21, entitled, "Cost Principles for Educational Institution"
- (B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
- (C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
- (D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
- (E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".

12.3 All of the work performed under this Agreement by the San Antonio Education Partnership shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, the San Antonio Education Partnership shall comply with the following:

Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/sirm/recordspubs/gr.html>
Government Code Chapter 552 pertaining to Texas Public Information Act found at www.capitol.state.tx.us/statutes/docs/GV/content.htm?GV:005.00.000552.00.htm

Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities

Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services

Texas Local Government Code can be found at:
<http://www.capitol.state.tx.us/statutes/go/go0055200toc.html>

In addition to the applicable laws referenced above, the San Antonio Education Partnership must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to the San Antonio Education Partnership hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

- 12.4 The San Antonio Education Partnership shall not engage in employment practices that have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, the San Antonio Education Partnership agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, the San Antonio Education Partnership certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- (A) Title VII of the Civil Rights Act of 1964, as amended;
 - (B) Section 504 of the Rehabilitation Act of 1973, as amended;
 - (C) The Age Discrimination Act of 1975, as amended;
 - (D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 - (E) Fair Labor Standards Act of 1938, as amended;
 - (F) Equal Pay Act of 1963, P.L. 88-38; and
 - (G) All applicable regulations implementing the above laws.
- 12.5 The San Antonio Education Partnership warrants that any and all taxes that the San Antonio Education Partnership may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Agreement. The San Antonio Education Partnership shall comply with all applicable local, State, and Federal laws including, but not limited to:
- (A) worker's compensation;
 - (B) unemployment insurance;
 - (C) timely deposits of payroll deductions;
 - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
 - (E) Occupational Safety and Health Act regulations; and
 - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 12.6 The San Antonio Education Partnership agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations there under.
- 12.7 The San Antonio Education Partnership agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.
- 12.8 All expenditures by the San Antonio Education Partnership or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations. Expenditures shall be made in accordance with all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code.

- 12.9 The San Antonio Education Partnership shall submit to the Managing City Department on an annual basis its Form 990 or 990T.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 The San Antonio Education Partnership warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the San Antonio Education Partnership or the City. For breach or violation of this warrant, the City shall have the right to terminate this Agreement without liability or, at its discretion, to deduct from the Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
- 13.2 The San Antonio Education Partnership covenants that neither it nor any member of its governing body or of its staff presently has any interest, whether direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The San Antonio Education Partnership further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 13.3 The San Antonio Education Partnership further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 13.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:
- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
 - (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.
- 13.5 The San Antonio Education Partnership acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 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 "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 subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 13.6 The San Antonio Education Partnership representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee 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). The San Antonio Education Partnership further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. TERMINATION

- 14.1 Termination for Cause - Should the San Antonio Education Partnership fail to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if the San Antonio Education Partnership should violate any of the covenants, conditions, or stipulations of

the Agreement, the City shall thereupon have the right to terminate this Agreement by sending written notice to the San Antonio Education Partnership of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). The San Antonio Education Partnership shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that the San Antonio Education Partnership's performance upon which final payment is conditioned shall include, but not be limited to, the San Antonio Education Partnership's complete and satisfactory performance, of its obligations for which final payment is sought.

- 14.2 Termination for Convenience - This Agreement may be terminated in whole or in part when the City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. The San Antonio Education Partnership shall also have the right to terminate this Agreement and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The San Antonio Education Partnership shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that the San Antonio Education Partnership's performance upon which final payment is conditioned shall include, but not be limited to, the San Antonio Education Partnership's complete and satisfactory performance of its obligations for which final payment is sought.
- 14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the San Antonio Education Partnership for failure to comply with the terms and provisions of this Agreement. Specifically, at the sole option of the City, the San Antonio Education Partnership may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the San Antonio Education Partnership is not in compliance with this Agreement. The San Antonio Education Partnership shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City. Notwithstanding any of the foregoing, if this Agreement is terminated for any reason or if the City delays, suspends, limits or cancels funds, rights or privileges, the City shall honor and pay to the San Antonio Education Partnership New School Scholarship reimbursements up to the amount budgeted for that purpose in this Agreement.
- 14.4 Should the San Antonio Education Partnership be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment shall be within the City's sole and absolute discretion and shall be grounds for termination for cause.

XV PROHIBITION OF POLITICAL ACTIVITIES

- 15.1 The San Antonio Education Partnership agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.
- 15.2 The San Antonio Education Partnership agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.
- 15.3 The prohibitions set forth in Article XV, sections 15.1 and 15.2 of this Agreement include, but are not limited to, the following:

- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
- (B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
- (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and
- (D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

- 15.4 To ensure that the above policies are complied with, the San Antonio Education Partnership shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the Managing City Department. The San Antonio Education Partnership shall list the name and number of a contact person from the Managing City Department on the statement that the San Antonio Education Partnership's personnel can call to report said violations.
- 15.5 The San Antonio Education Partnership agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the San Antonio Education Partnership under this Agreement may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, the San Antonio Education Partnership and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XVI. PERSONNEL MANAGEMENT

- 16.1 The San Antonio Education Partnership's Director will provide input to the San Antonio Education Partnership Program Senior Management Analyst (City employee) who will prepare and submit to the Director of the Managing City Department an Individual Performance Development Plan as required by the City for each City employee assigned to the San Antonio Education Partnership.
- 16.2 The San Antonio Education Partnership establishes personnel management policies and procedures for employee positions paid by the San Antonio Education Partnership. The San Antonio Education Partnership will comply with all state and federal laws prohibiting discrimination and a hostile work environment and agrees to provide a workplace free of harassment.
- 16.3 The San Antonio Education Partnership agrees to provide the City with the names and license registration of any employees of the San Antonio Education Partnership regulated by State law whose activities contribute toward, facilitate, or coordinate the performance of this Agreement.
- 16.4 Chief Executive Officers (CEOs), directors and other supervisory personnel of the San Antonio Education Partnership may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program

delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

XVII. ADVERSARIAL PROCEEDINGS

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

XVIII. CITY-SUPPORTED PROJECT

- 18.1 The San Antonio Education Partnership shall publicly acknowledge that this Project is supported by the City as directed by the Managing City Department.

XIX. EQUIPMENT

- 19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at the Agreement's termination, for whatever reason. The San Antonio Education Partnership agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Agreement. Equipment that has reverted to the San Antonio Education Partnership through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.
- 19.2 The San Antonio Education Partnership agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the San Antonio Education Partnership to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.
- 19.3 The San Antonio Education Partnership shall maintain records on all items obtained with City funds to include:
- (A) A description of the equipment, including the model and serial number, if applicable;
 - (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
 - (C) An indication of whether the equipment is new or used;
 - (D) The vendor's name (or transferred from);
 - (E) The location of the property;
 - (F) The property number shown on the property tag; and,
 - (G) A list of disposed items and disposition
- 19.4 The San Antonio Education Partnership is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The San Antonio Education Partnership shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that the San Antonio Education Partnership discovers the lost, stolen, missing, damaged and/or destroyed

equipment; property. The report submitted by the San Antonio Education Partnership to the Managing City Department shall minimally include:

- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
- (C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

- 19.5 All equipment purchased under this Agreement shall be fully insured against fire, loss and theft.
- 19.6 The San Antonio Education Partnership shall provide an annual inventory of assets purchased with funds received through the City to the Managing City Department.

XX. TRAVEL

- 20.1 The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present.

(A) The San Antonio Education Partnership agrees that mileage reimbursement paid to the San Antonio Education Partnership's employees shall be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with Internal Revenue Service rules. The San Antonio Education Partnership further agrees that in order for its employees to be eligible for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by the City. The San Antonio Education Partnership shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the San Antonio Education Partnership.

(B) The San Antonio Education Partnership agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Agreement, the San Antonio Education Partnership shall 1) provide City with detailed documentation of such business travel expense(s), 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration, 3) purchase all business travel at economy class rates and shall document such and 4) submit support for conferences to include itineraries and documentation certifying conference attendance.

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XXII. DEBARMENT

- 22.1 The San Antonio Education Partnership certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

- 22.2 The San Antonio Education Partnership shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the contract, including any renewals hereof, the San Antonio Education Partnership learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXIII. ASSIGNMENT

- 23.1 The San Antonio Education Partnership shall not assign or transfer the San Antonio Education Partnership's interest in this Agreement or any portion thereof without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXIV. AMENDMENT

- 24.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and the San Antonio Education Partnership and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing City Department shall have the authority to execute an amendment of this Agreement without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws, and in the following circumstances:

A. an increase in funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Agreement or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing Agreement funding during the term of this Agreement shall not exceed the foregoing amount;

B. modifications to the Balanced Scorecard Performance Plan set forth in Attachment II hereto, so long as the terms of the amendment stay within the parameters set forth in the Executive Summary, also set forth in Attachment I hereto;

C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Agreement remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment III) of this Agreement;

D. modifications to the insurance provisions described in Article IX of this Agreement that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department.

E. modifications to Article III herein to reduce the total amount of reimbursement that shall be made to the San Antonio Education Partnership by City, and to amend the budget accordingly which is set forth in Attachment III hereto, in the event that the San Antonio Education Partnership does not meet the requirements set forth in Article I Scope of Work, which is set forth in Attachment II Balanced Scorecard Performance Plan hereto. The San Antonio Education Partnership shall execute any and all amendments to this Agreement that are required as a result of a modification made pursuant to this Section 24.1 (E).

XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City.
- 25.2 The San Antonio Education Partnership must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the authority to monitor, audit, examine,

and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by the San Antonio Education Partnership with respect to any of its sub-contracts supported by any part of the Total Allocation, then the San Antonio Education Partnership will be deemed to be in default of this Agreement, and as such, this Agreement will be subject to termination in accordance with the provisions hereof.

- 25.3 Any work or services for sub-contracting hereunder shall be sub-contracted only by written Agreement, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by sub-contractors with this Agreement shall be the responsibility of the San Antonio Education Partnership. The San Antonio Education Partnership agrees that payment for services of any sub-contractor shall be submitted through the San Antonio Education Partnership, and the San Antonio Education Partnership shall be responsible for all payments to sub-contractors.
- 25.4 The San Antonio Education Partnership certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

XXVI. OFFICIAL COMMUNICATIONS

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

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

The San Antonio Education Partnership:
Executive Director
San Antonio Education Partnership
206 San Pedro Avenue, Ste 200
San Antonio, TX 78205

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

XXVII. VENUE

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

XXVIII. GENDER

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

XXIX. AUTHORITY

- 29.1 The signer of this Agreement for the San Antonio Education Partnership represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the San Antonio Education Partnership and to bind the San Antonio Education Partnership to all of the terms, conditions, provisions and obligations herein contained. The San Antonio Education Partnership shall provide evidence to City upon execution of this Agreement that it is currently operating as a Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code section 501(c)(3) status.

The San Antonio Education Partnership must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. The San Antonio Education Partnership shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Agreement.

XXX. LICENSES AND TRAINING

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

XXXI. INDEPENDENT ORGANIZATION

- 31.1 It is expressly understood and agreed that the San Antonio Education Partnership is an independent organization that provides professional services for the City. As such, the San Antonio Education Partnership shall be responsible for its respective acts or omissions and that the City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 31.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 31.3 Any and all of the employees of the San Antonio Education Partnership, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of the San Antonio Education Partnership only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the San Antonio Education Partnership.

XXXII. SEVERABILITY

- 32.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this 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 this 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.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered "high profile" as that term is defined in the City of San Antonio Contracting Policy and Process Manual.

- 33.1 The San Antonio Education Partnership acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person begins negotiations or discussions of a contract until 30 Calendar days following the contract award. The San Antonio Education Partnership understands that if the legal signatory entering the Agreement has made such a contribution, the City may not award the Agreement to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified in writing at the

time negotiations for this Agreement are initiated, if the identity of the signatory will be different from the individual submitting the response.

- 33.2 The San Antonio Education Partnership acknowledges that the City has identified this Agreement as high profile
- 33.3 The San Antonio Education Partnership warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare the Agreement void.

XXXIV UNLAWFUL EMPLOYMENT OF ALIENS

- 34.1 In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if San Antonio Education Partnership receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), San Antonio Education Partnership shall repay all funds received under this Contract with interest in the amount of three percent (3%). Such repayment shall be made within 120 days of San Antonio Education Partnership receiving notice from the City of the violation. For the purposes of this section, a public subsidy is defined as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry or sector of the state's economy or to retain or create jobs in this state. This term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates or tax abatements.

[signatures on following page]

XXXIV. ENTIRE CONTRACT

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

In witness of which this Agreement has been executed effective the _____ day of _____, 2009.

CITY OF SAN ANTONIO:

SAN ANTONIO EDUCATION PARTNERSHIP:

Director
Department of Community Initiatives

106 San Pedro, Suite 200
San Antonio, TX 78205



Executive Director

APPROVED AS TO FORM:



11/02/09

City Attorney

ATTACHMENTS

- Attachment I - Executive Summary
- Attachment II - Balanced Scorecard Performance Plan
- Attachment III - Reimbursable Expenses
- Attachment IV - City Funds Held by the San Antonio Education Partnership in the New Schools Fund Account
- Attachment V - Contract Monitoring Report Form
- Attachment VI - SBEDA Plan

Attachment I

EXECUTIVE SUMMARY

San Antonio Education Partnership

EXECUTIVE SUMMARY WILL BE MODIFIED TO REFLECT CONTRACT AS FINALLY AGREED BY THE PARTIES:

In Fiscal Year 2009-10, the San Antonio Education Partnership will provide scholarship opportunities to students at high schools sponsored by the City. This work includes, but is not limited, to the following:

- Providing specific information materials to communicate scholarship opportunity to students in sponsored schools;
- Undertaking outreach (class presentations, student assemblies, parent forums, faculty meetings, etc.) to students, parents and school faculty/staff at schools to create awareness of college access, the Education Partnership and the scholarship opportunity;
- Meeting with students to explain eligibility requirements and complete "Commitment to College" form;
- Working with schools to obtain grade and attendance information to develop preliminary and final eligibility lists of Partnership-eligible scholarship students;
- Creating database to maintain information for new students for reporting, eligibility, and verification purposes, including modification of existing Client Services Information System (CSIS) database;
- Continuing to undertake organizational modifications to incorporate new school staff at new expansion schools into the existing Partnership and high school structures; and
- Continuing to work with colleges and universities to establish protocols for additional scholarship recipients from the expansion schools.

Attachment III

BUDGET
Reimbursable Expenses

San Antonio Education Partnership FY 2010 Budget	
Data Management	\$73,752.00
Outreach	\$372,248.00
Scholarships	\$1,406,952.00
SAEP Allocation	\$1,852,952.00

Attachment IV

**City Funds Held By San Antonio Education Partnership
in the New Schools Fund Account***

Fiscal Year	City Funding	Program Income Interest Earned	SAEP Program Expenses	Reversion to City	City Fund Balance
2001	\$650,000	\$12,320	-0-	-0-	\$662,320
2002	\$650,000	\$13,897	(\$220,675)	-0-	\$1,105,542
2003	\$584,895	\$10,902	(\$221,425)	-0-	\$1,479,914
2004	\$581,895	\$11,035	(\$340,908)	-0-	\$1,731,936
2005	-0-	\$34,749	(\$400,175)	(\$279,120)	\$1,087,390
2006	\$500,650	\$34,811	(\$499,150)	-0-	\$1,123,701
2007	\$663,267	\$46,659	(\$663,270)	(\$50,000)	\$1,120,357
2008	\$1,216,619	\$19,919	(\$1,216,619)	(\$133,501)	\$1,006,775
2009 through 5.31.09	\$870,582	\$5,143	(\$845,645)	-0-	\$1,036,855
Total	\$5,717,908	\$189,435	(\$4,407,867)	(\$462,621)	\$1,036,855

* New Schools Fund Account Balance includes City Reimbursements for Scholarships, the Outreach Program, and Data Management

Attachment V

CONTRACT MONITORING REPORT FORM

Contract Monitoring Report Form is to be provided by the City of San Antonio and prepared and submitted monthly by the San Antonio Education Partnership.