

AN ORDINANCE 2012-04-12-0271

AUTHORIZING A FUNDING AGREEMENT WITH SAN ANTONIO SPORTS IN THE AMOUNT OF UP TO \$49,899.00 WITH FUNDS AVAILABLE FROM THE FY 2012-2017 CAPITAL IMPROVEMENT BUDGET, DISTRICT 4 OPEN SPACE PROPERTY ACQUISITION AND CITY COUNCIL DISTRICT 8 CITY COUNCIL PROJECT FUNDS FOR DEVELOPMENT OF THE CITY OF SAN ANTONIO'S FIRST SPARK SCHOOL PARK AT SKY HARBOR ELEMENTARY SCHOOL IN THE SOUTHWEST INDEPENDENT SCHOOL DISTRICT LOCATED IN CITY COUNCIL DISTRICT 4.

* * * * *

WHEREAS, a Funding Agreement with San Antonio Sports (SAS) will consist of \$24,900.00 in funding available from the FY 2012-2017 Capital Improvement Budget, District 4 Open Space Property Acquisition and \$24,999.00 in Council District 8 City Council Project Funds (CCPF) for a total of \$49,899.00; and

WHEREAS, the Funding Agreement will permit the City to collaborate with SAS to support development of the first San Antonio SPARK School Park (SPARK park) to be located at Southwest Independent School District's Sky Harbor Elementary School located in City Council District 4; and

WHEREAS, this initial location was selected by SAS based upon the school's interest, the need for park development in the area surrounding the school, and the neighborhood's demonstrated willingness to help plan, fund, and sustain the SPARK park; and

WHEREAS, the park will serve the school population during school hours and will be available for community use in the evenings, on weekends, school holidays and during summer months; and

WHEREAS, planned park improvements include playground equipment, art features, an outdoor classroom and pavilion, a community garden, athletic fields and walking trails; and

WHEREAS, the University of Texas at San Antonio College of Architecture will provide architectural design and drawing assistance and the City's Parks and Recreation Department will provide trees and landscape materials with San Antonio College volunteers assisting with installation; and

WHEREAS, completion of construction is anticipated in fall 2012; and

WHEREAS, the Funding Agreement will commence upon City Council approval and will expire on December 31, 2012; and

WHEREAS, SAS will submit reimbursement requests for approved design, construction and material expenses associated with development of the SPARK park; **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 Parks and Recreation Department or his designee, is authorized to execute a Funding Agreement with San Antonio Sports in an amount up to \$49,899.00 with funds available from the FY 2012-2017 Capital Improvement Budget, District 4 Open Space Property Acquisition and City Council District 8 City Council Project Funds for development of the City of San Antonio's first SPARK School Park at Sky Harbor Elementary School in the Southwest Independent School District located in City Council District 4. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funding in the amount of \$24,999.00 for this ordinance is available in Fund 11001000, Cost Center 7004080001, General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 3. Payment not to exceed \$24,999.00 is authorized to San Antonio Sports and should be encumbered with a purchase order.

SECTION 4. The amount of \$24,900.00 from SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 26-00565, Prop Acquisition-Open Space-District 4, is authorized to be encumbered and made payable to San Antonio Sports.

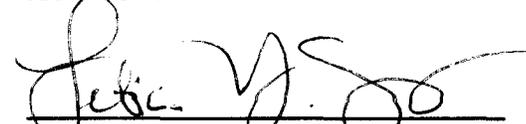
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 6. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 12th day of April, 2012.

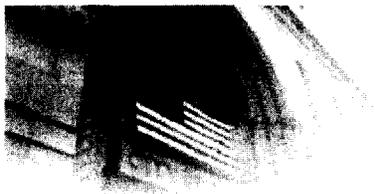

M A Y O R
Julián Castro

ATTEST:


for Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 12B

Name:	12A, 12B						
Date:	04/12/2012						
Time:	09:54:56 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Funding Agreement with San Antonio Sports in the amount of up to \$49,899.00 with funds available from the FY 2012-2017 Capital Improvement Budget, District 4 Open Space Property Acquisition and City Council District 8 City Council Project Funds for development of the City of San Antonio's first SPARK School Park at Sky Harbor Elementary School in the Southwest Independent School District located in City Council District 4.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				x
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

STATE OF TEXAS

COUNTY OF BEXAR FUNDING AGREEMENT

CITY OF SAN ANTONIO

This Agreement ("Agreement" or "Contract") is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____, and San Antonio Sports, a non-profit organization ("SAS").

WITNESSETH:

WHEREAS, \$24,900.00 is available through the FY 2012-2017 Capital Improvement Budget in District 4 Open Space Property Acquisition funds and \$24,999.00 is available from City Council District 8 City Council Project Funds for the benefit of the SPARK School Park Program in San Antonio; and

WHEREAS, San Antonio Sports (SAS) is serving as the local 501(c)(3) non-profit organization overseeing the development and implementation of the SPARK School Park program in San Antonio; and

WHEREAS, SAS will be implementing the first SPARK School Park program at Southwest Independent School District's Sky Harbor Elementary School:

NOW THEREFORE:

The parties hereto agree as follows:

1. The term of this Agreement is from the date of execution by both parties through December 31, 2012.
2. Funding received by SAS under the terms of this Agreement will be used by SAS to construct the first SPARK School Park program improvements at Sky Harbor Elementary School located at 5902 Fishers Bend Street, San Antonio, Texas.
3. City will provide up to \$24,999.00 in City Council Project Funds "CCPF Funds") as outlined in the *Terms and Conditions - City Council Project Funds (CCPF) Application/Contract* which is attached as Exhibit A.
4. City will provide up to \$24,900.00 funds available within the Council District 4 Open Space Property Acquisition Project 26-00565 ("District 4 Funds") as outlined below.
 - (a) Not more than once each calendar month, SAS may request reimbursement of payments made for the design, construction and purchase of materials necessary to construct SPARK School Park improvements at Sky Harbor Elementary School.
 - (b) Each request for reimbursement will be accompanied by copies of invoices and evidence of payment by SAS. SAS agrees to provide other supporting documentation as may be requested by City.
 - (c) City will review SAS's reimbursement request and supporting documentation and notify SAS if any expenditures are determined by City to be outside the permissible parameters of this Agreement.
 - (d) City will provide reimbursement to SAS within thirty (30) calendar days after receipt of an approved reimbursement request.

- (e) In the event that SAS's payments for the design, construction and purchase of materials necessary to construct the SPARK School Park improvements, City, through its Director of Parks and Recreation, may approve reimbursement of other SAS expenditures related to the implementation of the SPARK School Park program.
5. SAS agrees to maintain accounting records expenditure of the funds reimbursed under this Agreement for a period of 4 years. SAS shall maintain the accounting records in accordance with generally accepted accounting practices and all records shall be subject to audit by the City or its contracted auditor.
 6. In the event that the City finds that SAS failed to use the CCPF Funds or District 4 Funds, or the resulting item or service, in the manner for which they were approved, the City shall have the option to demand a refund of up to the full amount provided under this Agreement, or to require surrender of the purchased good to the City, as appropriate. The City shall provide written notice of the election of remedy and the time within which SAS must comply with the demand.
 7. SAS agrees that the City's liability is limited to making reimbursements for eligible costs incurred consistent with the terms and provisions of the Agreement. SAS agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of SAS).
 8. SAS agrees to comply with Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations, including ensuring that its construction contractor(s) submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of the City's Capital Improvement Management Services ("CIMS") Department.
 9. Insurance. SAS agrees that it is responsible for insuring its employees and subcontractors for Worker's Compensation or Alternative Plan. SAS shall be responsible for insuring its own property, equipment, autos and legal liability. In no event will the City be required to maintain any insurance coverage for SAS.
 10. **Indemnification. SAS covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to SAS's activities under this Agreement, including any acts or omissions of SAS, any agent, officer, director, representative, employee, consultant or subcontractor of SAS, 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 SAS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS**

LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SAS shall advise the City in writing within 24 hours of any claim or demand against the City or SAS known to SAS related to or arising out of SAS's activities under this Agreement and shall see to the investigation and defense of such claim or demand at SAS's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAS of any of its obligations under this paragraph.

11. SAS shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.
12. SAS 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 religions facility or activity.
13. Conflict of Interest. SAS 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 partner, sibling, 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.

SAS warrants and certifies, and this Agreement is made in reliance thereon, that neither SAS nor it officers, employees and agents are a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. SAS 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 SAS, if a business, or ten (10) percent or more of the fair market value of SAS, if a business entity. Applicant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14. Termination. Should SAS fail to fulfill, in a timely and proper manner, obligations under this Agreement, or if SAS should violate any of the covenants, conditions or stipulations of the Agreement, the City shall thereupon have the right to terminate this Agreement and its obligations hereunder by sending written notice to SAS of such termination and specify the effective date thereof (which date shall not be sooner than the end of five (5) days following the day on which such notice is sent).

15. Assignment. This Agreement is not assignable and funds received as a result hereof shall only be used by the parties stated herein. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.
16. Independent Contractor. SAS understands and agrees that it, and all persons designated by it, to provide services in connection with this Agreement, is (are) and shall be deemed to be an independent contractor(s), responsible for SAS's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
17. Official Communications. All official communications and notices provided by the City shall be deemed sufficient if in writing and e-mailed to the e-mail address, or mailed, registered or certified mail, postage prepaid, to the postal address set forth below. Official communications and notices provided by SAS to the City shall be deemed sufficient if addressed in writing and mailed, registered or certified mail, postage prepaid to the postal address set forth below.

SAS: San Antonio Sports
 Attention: Executive Director
 P O Box 830386
 San Antonio TX 78283

City – if related to the CCPF Funds: City Council Office
 Attention: CCPF
 City of San Antonio
 P O 839966
 San Antonio TX 78283

City – if related to the District 4 Funds: City of San Antonio
 Attention: Parks and Recreation Department
 P O Box 839966
 San Antonio TX 78283

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

18. Severability. If any provisions of this Agreement are for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.
19. Entire Agreement. This Agreement, together with the CCPF Authorizing Ordinance 2011-12-08-1011, embodies the final and entire agreement of the parties hereto, superseding all prior and contemporaneous negotiations, proposals, contracts, commitments, promises, acts, conduct, courses of dealings, representations, statements, assurances and understandings, whether oral or written, between the parties and relating to matters of this Agreement.

CITY OF SAN ANTONIO:

SAS:

By: City Manager

Attest:
City Clerk

APPROVED AS TO FORM:

City Attorney

Dr. Susan Blackwood
Executive Director

EXHIBIT A

The City of San Antonio, Texas
OFFICE OF THE CITY COUNCIL/MAYOR

CITY COUNCIL PROJECT FUNDS APPLICATION



INTERNAL OR EXTERNAL CCPF APPLICATION

[Instructions](#)

Today's date: 03/23/2012

Are you submitting an:

- Internal Application
 External Application

APPLICANT INFORMATION

Applicant Last Name: Blackwood, Ed.D. First: Susan Middle:

Amount Requesting*:
\$24,999.00

**Please note that any award over \$10,000 will require City Council Approval.*

Council District Request (May send to multiple districts):

- District 1 District 2 District 3 District 4 District 5 District 6 District 7 District 8 District 9 District 10 Mayor

Project Request - CCPF FUNDS (Delegate Agencies Excluded):

City Council finds that investment of CCPF in programs, activities, events, scholarships, goods or services deemed eligible under the criteria and guidelines established under this ordinance serve the municipal public purposes of:

- Promoting the health, safety and welfare of the community;
- Promoting family, social and economic stability;
- Promoting community education and training, which, in part, prepares the workforce for productive employment and meets the professional needs of the City;
- Promoting community recreation;
- Preventing homelessness, and
- Revitalizing neighborhoods

Please identify your project request:

- District Community Events
 Education
 Youth Senior Activities

City Council finds that the following qualify as eligible Applicants for CCPF.

- 1) A City Council District Office for district events;
- 2) A non-profit entity that a) is exempt from federal income tax or is able to show proof at the time of application for CCPF of having filed for tax exempt status as determined by the Internal Revenue Service under section 501(c)(3) of the United States Internal Revenue Code, or is an affiliate of a non-profit, tax-exempt corporation, b) is able to show proof of exemption from franchise taxes by the Texas State Comptroller at the time of application for CCPF, and c) demonstrates that the proposed services, programs and events funded by CCPF will be open to the public;
- 3) A neighborhood association or other legally formed entity whose purpose as stated in its organizational documents is defined as serving the community;
- 4) Another governmental entity, such as municipality, county, school district, or other political subdivision of the State of Texas, who is requesting CCPF for a project it is not required to carry under its own charter or mandates by state or federal law, unless it involves a joint project with the City

PROJECT INFORMATION

Project Name: SPARK School Park - Sky Harbour Elem. Project Liaison: Dr. Susan Blackwood Date of Event: 05/01/2012

Description of Event/Purpose (Describe in 200-300 words):

Community support is necessary for schools to succeed, and vice versa. A common ground is essential for school and community unity. One solution is to create a unifying element, a SPARK Park. Started in Houston in 1983, the SPARK School Park Program utilizes existing public school land in lower-income areas to create community-use green space, known as SPARK Parks. The park serves the school population during school hours and is available for community use in the evenings, on weekends, school holidays, and during the summer months. With a SPARK Park, the school becomes the center of the community again. Moreover, the school's significance in the community is restored and the community acquires a sense of ownership in their school.

Through a partnership with the SPARK School Park Program in Houston, San Antonio Sports will serve as the 501(c)3 to implement the SPARK Program in San Antonio. Sky Harbour Elementary, in the Southwest ISD, will become the first SPARK Park in San Antonio. Sky Harbour was selected based on the following criteria: school's interest, the need for park development for area surrounding school, and the neighborhood's demonstrated willingness to help plan, fund, and sustain the SPARK Park.

The SPARK School Park Program at Sky Harbor Elementary will based on a nautical theme that will support fitness and education for the school and the community. San Antonio Sports is requesting City Council Project Funds to create art features (entryway arch, murals), provide fitness equipment (10 fitness stations) along a 2600' walking trail, and provide site furnishings. San Antonio Sports will seek additional funding for a walking trail, athletic fields (soccer, football), and playground. There are 670 students, plus family members, nearly 60 staff/faculty members, and the surrounding community whom will benefit from the SPARK Park. Over 95% of the students are economically disadvantaged and 98% are Hispanic. Sky Harbour's participation will not only create community leaders and a self-reliant community, but also the realization that working together accomplishes great things.

Invoices of how funds will be allocated (I certify that I have attached all invoices related to this request. I understand that any missing invoices will not be covered by funds and purchases need to exclude alcohol, gift/gas cards, livestock, equipment or supplies from city departments and delegate agencies):

Important Note: If you are not a registered vendor with the City of San Antonio, visit this website to register: <http://www.sanantonio.gov/purchasing/SAePS.aspx>

Project Liaison Phone Number: (210) 820-2110 Email: sblackwood@sanantonioparks.org

Department/District/Organization: San Antonio Sports Address: 100 Montana Street, San Antonio, TX 78203

FOR EXTERNAL APPLICANTS ONLY

All fields are required to have the attachments when submitting. Applications will be considered incomplete if missing information.

Agency Board Roster:

I certify that I have attached a list of board members and their contact information.

Agency Fact:

I certify that I have attached a copy of the organization purpose or mission, the services that the organization offers along with the name of the project and program description for which funds are being requested.

Organization Verification of Federal Tax Identification #:

I certify that I have attached a copy of the organization's Federal Tax Identification letter.

Acknowledgement Agreement: [Terms & Conditions]

Disagreement with these terms will cancel the submission of this grant application. Agree with the terms

SIGNATURE

All fields are required to be filled out prior to submitting. Applications will be considered incomplete if missing information.

I certify that the statements contained in this City Council Project Fund Application are true, correct and complete to the best of my knowledge and belief.

Signature of Applicant: Dr. Susan Blackwood

Date: 03/23/2012

APPROVAL OF FUNDS

Signature of Councilmember (If Applicable):

[Handwritten Signature]

Date: 2/26/12

Signature of Department Director/Department (If Applicable):

[Handwritten Signature]

Date: 3/26/12

Fiscal Approval:

[Handwritten Signature]

Approved Funding: \$24,999 AMC

Terms and Conditions City Council Project Funds (CCPF) Application / Contract



1. Applicant understands that the City may award an amount less than the amount requested in the Application, or may authorize expenditures in partial support of the Applicant's proposed program, activity, event, item(s) or service described in Applicant's Application, if deemed eligible. The City shall notify Applicant as to the City Council Project Funds (CCPF) approved amount (the "Final Approved Amount") and the purposes for which the expenditures are authorized (together, the authorized purpose and Final Approved Amount are the "Approved Project"). By accepting and expending the Final Approved Amount, notwithstanding that it may be less than the amount requested or that it may partially support Applicant's proposed program, activity, event, item(s) or service, Applicant fully accepts the City's Approved Project and these Terms and Conditions.
2. Once the Application (as may be modified by City based upon the Approved Project) is approved by the City, as evidenced by the electronic signature of the City Manager, or authorized designee, or the Assistant to City Council, and the Applicant accepts the Final Approved Amount, these Terms and Conditions and the Application (as modified by City based upon the Approved Project) form a binding contract (the "Contract"). The Contract shall be effective and considered fully executed on the City's Final Approval Date.
3. In providing CCPF, the City finds that one or more of the following municipal public purpose are served by Applicant's proposed use of the funds: (a) promoting the health, safety and welfare of the community; (b) promoting family, social and economic stability; (c) promoting community education and training, which, in part, prepares the workforce for productive employment and meets the professional needs of the City; (d) promoting community recreation; (e) preventing homelessness; and (f) revitalizing neighborhoods.
4. Applicant agrees to use the Final Approved Amount for the purposes described in the Contract. Applicant shall not use CCPF for any use prohibited by Ordinance No. 2011-12-08-1011. A copy of the Ordinance may be reviewed by clicking here: https://webapps1.sanantonio.gov/rfcadocs/r_8616_20111213110506.pdf
5. Applicant understands that its Application may not, and does not, constitute a request for funding, for a project, activity, event or program - or duplicative in nature to project, activity, event or program - currently funded by the City.
6. Applicant agrees to maintain accounting records expenditure of the funds reimbursed with CCPF and demonstrating and resulting operation of the program, activity, event, or use of the item(s) or service, in support of the Approved Project for a period of 4 years. Applicant shall maintain the accounting records in accordance with generally accepted accounting practices. All of the above-described records shall be subject to audit by the City or its contracted auditor.
7. In the event that the City finds that Applicant failed to use the Final Approved Amount, or the resulting item or service, in the manner for which they were approved, the City shall have the option to demand a refund of up to the full amount of the Final Approved Amount provided under this Contract, or to require surrender of the purchased good to the City, as appropriate. The City shall provide written notice of the election of remedy and the time within which Applicant must comply with the demand.
8. Applicant agrees that the City's liability is limited to making reimbursements for eligible costs incurred consistent with the terms and provisions of the Contract. Applicant agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Applicant).

9. **Deadline for submission of quotes and invoices in support of Application.** Applicant understands and agrees that the City may deny payment or reimbursement for expenditures if Applicant fails to submit all quotes, invoices or receipts for which Applicant is seeking payment or reimbursement within ninety (90) days of the date of Applicant's submission of its Application.

10. **Deadline for expenditures and submission of request for reimbursement.** Applicant also understands and agrees that any obligation of the City to pay or reimburse shall end upon expiration of the ninety (90) day period following City's Final Approval of the Application, and that the Contract shall immediately terminate with no further action, unless Applicant is otherwise notified.

11. **Insurance.** Applicant agrees that it is responsible for insuring its employees and subcontractors for Worker's Compensation or Alternative Plan. Applicant shall be responsible for insuring its own property, equipment, autos and legal liability. In no event will the City be required to maintain any insurance coverage for Applicant.

12. **Indemnification.** APPLICANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to APPLICANT'S activities under this Contract, including any acts or omissions of APPLICANT, any agent, officer, director, representative, employee, consultant or subcontractor of APPLICANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. 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 APPLICANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. APPLICANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or APPLICANT known to APPLICANT related to or arising out of APPLICANT'S activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at APPLICANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving APPLICANT of any of its obligations under this paragraph.

13. Applicant shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

14. Applicant 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.

15. **Conflict Of Interest.** Applicant 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, sibling, 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.

Applicant warrants and certifies, and this Contract is made in reliance thereon, that neither the Applicant nor its officers, employees and agents are a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. The Applicant 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 Applicant, if a business entity, or ten (10) percent or more of the fair market value of the Applicant, if a business entity. Applicant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code

16. SPECIAL PROVISIONS RELATED TO SCHOLARSHIP PROGRAMS. Applicant understands that if City Council Project Funds are awarded for a scholarship program, Applicant shall maintain a list of the recipients awarded a scholarship and the amount awarded under the program. Applicant shall provide this information to the City upon request. Applicant understands that its scholarship program must meet the following criteria: (a) the recipient must be a City of San Antonio resident; (b) the recipient must have maintained a "B" average throughout high school; (c) the recipient must have maintained a 95% attendance rate throughout high school; and (d) the recipient must enroll full-time (i.e., a minimum of 12 semester hours) in a junior college or university.

17. Termination. Should the Applicant fail to fulfill, in a timely and proper manner, obligations under this Contract, or if the Applicant should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract and its obligations hereunder by sending written notice to the Applicant of such termination and specify the effective date thereof (which date shall not be sooner than the end of five (5) days following the day on which such notice is sent).

18. Assignment. This Contract is not assignable and funds received as a result hereof shall only be used by the parties stated herein. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

19. Independent Contractor. Applicant understands and agrees that it, and all persons designated by it, to provide services in connection with this Contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Applicant's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

20. Official Communications. All official communications and notices provided by the City shall be deemed sufficient if in writing and e-mailed to the e-mail address, or mailed, registered or certified mail, postage prepaid, to the postal address set forth in the Project Information portion of the Application. Official communications and notices provided by Applicant to the City shall be deemed sufficient if addressed in writing and mailed, registered or certified mail, postage pre-paid to the following: City Council Office, Attention CCPF; San Antonio, TX 78205. Notices of changes of address by either party must be made in writing, and delivered to the other party's last known address within five (5) business days of the change.

21. Severability. If any provision of this Contract is for any reason held to be unconstitutional, void, or invalid, the remaining provisions or sections contained herein shall remain in effect and the section so held shall be reformed to reflect the intent of the parties.

22. Entire Agreement. This Contract, together with Authorizing Ordinance 2011-12-08-1011, embodies the final and entire agreement of the parties hereto, superseding all prior and contemporaneous negotiations, proposals, contracts, commitments, promises, acts, conduct, courses of dealings, representations, statements, assurances and understandings, whether oral or written, between the parties and relating to matters in this Contract.