

AN ORDINANCE

2009-05-21-0430

**AUTHORIZING A \$200,000.00 PROFESSIONAL SERVICES AGREEMENT WITH THE CARVER DEVELOPMENT BOARD TO PROVIDE FUNDRAISING, MARKETING AND MANAGEMENT SERVICES FOR THE CARVER COMMUNITY CULTURAL CENTER'S 2008-2009 AND 2009-2010 PERFORMANCE SEASONS.**

\* \* \* \* \*

**WHEREAS**, the City of San Antonio's Carver Community Cultural Center (Carver) serves as a leading multicultural arts presenter and educational institution serving the San Antonio metropolitan area and South Texas; and

**WHEREAS**, it is a historical center with a rich history of providing affordable and high quality visual and performing arts events in an accessible venue; and

**WHEREAS**, the City of San Antonio (City), often in collaboration with the Carver Development Board (CDB), has a long history of bringing the residents of San Antonio culturally enriching performing arts presentations along with providing a venue for local artists to display their talents; and

**WHEREAS**, the Carver's performance season attracts approximately 3,500 attendees each year; and

**WHEREAS**, in addition to the Carver's performance season, the Carver provides educational programming in the arts, including school matinee performances, dance and music classes, and workshops with the visiting artists that attract another 4,000 attendees; and

**WHEREAS**, the Carver also provides rental space for local community organizations that use the space for a wide variety of dance shows, pageants, meetings and receptions, attracting an additional 23,000 people each year; and

**WHEREAS**, the CDB is a non-profit organization which was established to perform the fundraising and charitable purposes for the Carver Community Cultural Center by soliciting grants, donations and gifts from organizations and persons for artistic and educational purposes, and to operate programs for the purpose of raising funds; and

**WHEREAS**, the City desires to contract with the CDB to improve the CDB's ability to carry out its mission, which ultimately benefits the Carver and the community who enjoy its programs; and

**WHEREAS**, under the contract, the CDB will conduct and manage fundraising and revenue producing activities to generate financial support for the Carver; **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 \$200,000.00 professional services agreement with the Carver Development Board (CDB) to provide fundraising, marketing and management services for the Carver Community Cultural Center's (Carver) 2008-2009 and 2009-2010 performance seasons. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** Funding for this ordinance is available as part of the FY09 Budget as set forth in the table below:

Amount	Cost Center	General Ledger	Fund
\$200,000.00	8002060028	5201040	11001000

**SECTION 3.** Payment not to exceed \$200,000.00 is authorized to the Carver Development Board 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 21<sup>th</sup> day of May, 2009.

ATTEST: *Suzie M. West*  
City Clerk

*[Signature]*  
MAYOR  
PHIL HARDBERGER

APPROVED AS TO FORM: *Hollis Young*  
City Attorney

<b>Agenda Item:</b>	34 ( in consent vote: 8, 9, 12, 15, 16, 17, 20A, 20B, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33A, 33B, 34, 36, 37 )						
<b>Date:</b>	05/21/2009						
<b>Time:</b>	04:44:39 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a \$200,000.00 professional services agreement with the Carver Development Board to provide fundraising, marketing and management services for the Carver Community Cultural Center's 2008-2009 and 2009-2010 performance seasons. [Frances A. Gonzalez, Assistant City Manager; Dennis J. Campa, Director, Community Initiatives]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					



**ACCORDINGLY**, in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishments of the tasks hereinafter described.

## **I. TERM**

- 1.1 This Agreement shall commence on April 1, 2009 and shall terminate on September 30, 2010 or upon satisfactory completion by BOARD, as determined solely by the City, of all activities and services set forth in Article III herein.

## **II. AGREEMENT PRICING AND BILLING**

- ~~2.1 The total of all payments and obligations made and incurred by CITY under this Agreement, in consideration for BOARD's performance of services under this Agreement, shall not exceed the total amount of Two Hundred Thousand and no/100 dollars (\$200,000.00).~~
- 2.2 The BOARD understands and agrees that CITY will pay BOARD for performance of services following submission of invoice(s) by BOARD. The information contained in each of the invoices submitted by BOARD to CITY shall be in such detail as may be required by CITY. Upon approval of each invoice by CITY, CITY will pay BOARD no later than thirty (30) days after the date of such approval, provided however that such approval shall be based upon satisfactory progress or completion of the work set forth in Article III herein. The question of satisfactory progress or completion of said work shall be determined by the CITY alone and its decision shall be final.
- 2.3 If specific circumstances require an advance payment on this Agreement, BOARD may submit to the Director of the Community Initiatives Department a written request for such advance payment. The Director of the Community Initiatives Department may, in his sole discretion, approve an advance payment on this Agreement.
- 2.4 The CITY shall not be liable for any payment under this Agreement for services which are unsatisfactory or which have not been approved by the CITY. CITY shall not be obligated or liable under the Agreement to any party, other than BOARD, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.5 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the Agreement referenced in Section 2.1 of the AGREEMENT.

### III. SCOPE OF SERVICES

- 3.1 The BOARD shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the responsibilities of BOARD as set forth in this Article III. Goals, objectives and performance standards for the Project will be established by the CITY'S Department of Community Initiatives and BOARD agrees to comply with said goals, objectives and performance standards.
- 3.2 The BOARD shall perform the following services and fulfill the following responsibilities pertaining to the Project under this Agreement:
  - 3.2.1 Conduct and manage fundraising / revenue producing activities to generate financial support for the Complex;

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  - 3.2.2 Solicit, accept and account for corporate, community and individual grants and donations;
  - 3.2.3 Contract with and compensate a grant writer to write no less than twenty (20) grant applications to support activities, including Residencies, Master Classes, Matinees, to be provided to the public free of charge or at minimal cost;
  - 3.2.4 Continue annual funding of Complex operations from grants and donations;
  - 3.2.5 Raise sufficient funds to offset artistic fees for no less than 5 performances for the 2008-2009 and 2009-2010 performance seasons;
  - 3.2.6 Recruit teachers and underwrite the provision of instruction for classes at the Carver School for Visual and Performing Arts;
  - 3.2.7 Develop, promote and provide input to the City regarding artistic and educational programming and related marketing for the 2008-2009 and 2009-2010 seasons;
  - 3.2.8 Conduct community outreach activities in order to generate public and private interest in the Complex;
  - 3.2.9 Market and engage in ticket sales for the 2008-2009 and 2009-2010 Complex performance season;
  - 3.2.10 Manage the Prudence Curry Society fundraiser and the Carver Seat Campaign by selling plaques for seats in the Carver Complex; and
  - 3.2.11 Host the Cavalcade of Stars by soliciting corporate and individual sponsors to participate;
  - 3.2.12 Continue recruitment of BOARD members impassioned about and supportive of the Complex's mission;
  - 3.2.13 Encourage BOARD members as part of their membership on the Board to be members of the Prudence Curry Society, to purchase a seat in the Carver Seat Campaign and to become Complex season ticket holders.

3.2.14 Submit to the Department of Community Initiatives through its designated representative such reports as may be required by the CITY in connection with the BOARD's performance of the above duties and ensure that all information contained in all required reports submitted to CITY is accurate.

#### IV. TERMINATION

- 4.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.
- 4.2 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this Agreement, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, the non defaulting party shall deliver notice to the defaulting party of its intent to terminate the contract and the effective date of said termination.
- 4.3 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 4.4 **EFFECT OF TERMINATION:** All files created, supplemented or maintained by BOARD pursuant to this Agreement are the property of the CITY. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the BOARD to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the BOARD'S sole cost and expense.
- 4.5 Within thirty (30) calendar days after the effective date of termination (unless an extension is authorized in writing by the CITY), the BOARD shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this Agreement through the effective date of termination.
- 4.6 Upon termination or cancellation of this Agreement, the CITY may immediately commence an audit of the BOARD'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the BOARD shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

- 4.7 In the event that this Agreement is terminated by either party hereto for any reason and the work required hereunder of BOARD is not fully completed to the satisfaction of CITY in accordance with the terms of this Agreement, then BOARD shall refund any and all sums of money paid by CITY to BOARD, or that portion of the Agreement amount that represents compensation attributable to services not satisfactorily performed by BOARD, as determined by CITY in its sole discretion, within ten (10) working days of CITY'S written request therefor.

#### V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the BOARD is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefor, 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.
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- 5.2 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.
- 5.3 Any and all of the employees of the BOARD, wherever located, while engaged in the performance of any work required by the CITY under this Agreement shall be considered employees of the BOARD 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 BOARD.

#### VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by BOARD under this Agreement shall be disclosed or made available to any individual or organization by BOARD without the express prior written approval of CITY. In the event BOARD receives any such request, BOARD shall forward such request to CITY immediately for disposition.
- 6.2 BOARD shall establish a method to secure the confidentiality of and shall comply with the confidentiality procedures pertaining to records and information that BOARD may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this Agreement.

## **VII. OWNERSHIP OF DOCUMENTS**

- 7.1 In accordance with Texas law, BOARD acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of BOARD pursuant to this Agreement shall be the subject of any copyright or proprietary claim by BOARD.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, ~~regardless of physical form or characteristic and regardless of whether public~~ access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.2 The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. BOARD and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be construed to require BOARD to transfer any ownership interest in BOARD's best practice and benchmarking information to the CITY.

## **VIII. INTELLECTUAL PROPERTY**

- 8.1 BOARD shall pay all royalties and licensing fees associated with the performance of duties under this Agreement. BOARD shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the Project. BOARD shall defend all suits for infringement of any intellectual property rights. Further, if BOARD has reason to believe that the design, service, process or product specified is an infringement of an intellectual property right, it shall promptly give such information to the CITY.

## **IX. RECORDS**

- 9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and

material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to BOARD.

- 9.2 BOARD shall deliver all Agreement related documents to the CITY, upon termination of the Agreement in a timely and expeditious manner, at BOARD's sole cost and expense.
  - 9.3 The BOARD shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.
  - 9.4 CITY shall be notified immediately by BOARD of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the Agreement. As such, BOARD understands and agrees that ~~CITY will process and handle all such requests.~~
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#### **X. RIGHT OF REVIEW AND AUDIT**

- 10.1 BOARD and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this Agreement and shall make such materials available to CITY, at CITY's Community Initiatives Department, 115 Plaza de Armas, San Antonio, Texas, at all reasonable times and as often as CITY may deem necessary during the Agreement term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

#### **XI. LICENSES AND CERTIFICATIONS**

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

#### **XII. CONFLICT OF INTEREST**

- 12.1 BOARD 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 board 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 percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) 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.

- 12.2 BOARD warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents performing on this Agreement is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. BOARD further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

### XIII. INSURANCE

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- 13.1 Prior to the commencement of any work under this Agreement, BOARD shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Community Initiatives Department, which shall be clearly labeled "Carver Development Board - Fundraising, Marketing and Management Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Community Initiatives Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 13.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- 13.3 BOARD's financial integrity is of interest to the CITY; therefore, subject to BOARD's right to maintain reasonable deductibles in such amounts as are approved by the CITY, BOARD shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at BOARD'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:

TYPE	AMOUNTS
1. Commercial General Liability Insurance (Broad Form) to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

13.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). BOARD shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. BOARD shall pay any costs incurred resulting from said changes.

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

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

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds 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;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.
- Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in

coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 13.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, BOARD shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend BOARD's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 13.7 In addition to any other remedies the CITY may have upon BOARD'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 BOARD to stop work hereunder, and/or withhold any payment(s) which become due to BOARD hereunder until BOARD demonstrates compliance with the requirements hereof.
- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which BOARD may be held responsible for payments of damages to persons or property resulting from BOARD's or its subcontractors' performance of the work covered under this Agreement.
- 13.9 It is agreed that BOARD's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT.

#### XIV. INDEMNITY

- 14.1 **BOARD 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 BOARD'S activities under this AGREEMENT including any acts or omissions of BOARD, any agent, officer, director, representative, employee, consultant or subcontractor of BOARD, 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 BOARD 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.**

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

#### **XV. AMENDMENT**

- 15.1 This Agreement, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final Agreement between the parties hereto.
- 15.2 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both CITY and BOARD and evidenced by passage of a subsequent City ordinance, as to CITY'S approval; provided, however, the Director of the Community Initiatives 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. In the event that a modification to the Scope of Services is required in Article III of this Agreement, so long as said modification does not change the overall purpose of the Agreement; and/or
- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The BOARD expressly agrees to comply with all applicable federal, state, and local laws.

**XVI. NOTICE**

- 16.1 Any notice required, permitted or appropriate under this Agreement shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or BOARD at the respective address set forth below or to any other address of which written notice of change is given:

**CITY**

City of San Antonio  
Attn: Dennis J. Campa, Director  
Department of Community Initiatives  
115 Plaza de Armas, Suite 210  
~~San Antonio, Texas 78205~~

**BOARD**

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

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**XVII. LEGAL AUTHORITY**

- 17.1 The person signing on behalf of BOARD represents and warrants and certifies that he has full legal authority to execute this Agreement on behalf of BOARD and has authority to bind the BOARD to all the terms, conditions, provisions and obligations contained herein.

**XVIII. SUBCONTRACTING AND ASSIGNING INTEREST**

- 18.1 Any subcontracts or assignments on interests entered into by BOARD concerning work tasks for this Agreement shall be communicated in writing to CITY prior to the effective date of this Agreement and prior to commencement of any work subsequent to this Agreement's effective date. BOARD shall not assign, sell, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY. Any such attempt at an assignment will be void ab initio, and shall confer no rights on the purported assignee. Should BOARD assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this Agreement, the CITY may, at its option, cancel this Agreement and all rights, titles and interest of BOARD shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by BOARD shall in no event release BOARD from any obligation under the terms of this Agreement, nor shall it relieve or release BOARD from the payment of any damages to CITY which CITY sustains as a result of such violation.

- 18.2 BOARD's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with BOARD arising from or in relation to this Agreement, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this Agreement. BOARD shall indicate this limitation in all contracts with approved subcontractors.
- 18.3 BOARD agrees to notify CITY any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement at the sole discretion of the CITY.
- 18.4 In no event shall such written consent, if obtained, relieve BOARD from any and ~~all obligations hereunder or change the terms of this Agreement.~~
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- 18.5 CITY must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

#### **XIX. SUCCESSORS AND ASSIGNS**

- 19.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, BOARD may not assign this Agreement without prior written consent of CITY in accordance with Section XVIII hereof.

#### **XX. NON WAIVER**

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the BOARD from any covenants and conditions required in this Agreement.

#### **XXI. COMPLIANCE**

- 21.1 BOARD shall provide and perform all services under this Agreement in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The BOARD 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 BOARD to suspension of payments, termination of this Agreement, and debarment and suspension actions.

- 21.3 BOARD 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. Additionally, BOARD agrees to abide by all applicable provisions of San Antonio City Code Section 2-8, as amended. Also, BOARD certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and 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; and
  - e. All applicable regulations implementing those laws.

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~~21.4 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, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.~~

#### **XXII. VENUE AND GOVERNING LAW**

- 22.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

#### **XXIII. SEVERABILITY**

- 23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future laws during the term of this Agreement, including any extension and renewal hereof, it is the intention of the parties hereto that the remainder of the Agreement shall not be affected thereby, and that in lieu of each clause or provision of the Agreement that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the Agreement.

#### **XXIV. GENDER**

- 24.1 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.

**XXV. CAPTIONS**

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

**XXVI. ENTIRE AGREEMENT**

26.1 This Agreement, together with its authorizing ordinance and exhibits, if any, embodies the final and entire Agreement of the parties hereto, superseding all oral or written previous and contemporary Agreements between the parties and relating to matters in this Agreement. No other Agreements, oral or otherwise regarding the matters of this Agreement shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

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**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY**

**City of San Antonio, Texas**

\_\_\_\_\_  
Dennis J. Campa, Director

**BOARD**

**Carver Development Board**

  
\_\_\_\_\_  
Pamela Bain, Chairman

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

\* = Required Fields



# City of San Antonio Discretionary Contracts Disclosure

Office of the  
City Clerk

Please fill this form out online and submit it for processing.  
Use the **Print** button to make a copy for your records

For use of this form, see Section 2-59 through 2-61 of the City's Ethics Code.

Disclosure submitted by:			
*First: Pamela	M.I.	*Last: Bain	Suffix:

\*Name and/or Number of the Discretionary Contract: Carver Community Cultural Center Professional Services Agreement

\*(1) Identify any individual(s) or business entity(ies) that are **party** to the discretionary contract:

A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and d/b/a if any.

Carver Development Board

\*(2) Do any of the identified parties to the contract have a **partner, parent** or **subsidiary** business entity?  Yes  No

\*(3) Are there any individuals or business entities that would be **subcontractor(s)** on the discretionary contract?  Yes  No

\*(4) Are there any **lobbyists** or **public relations firms** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract?  Yes  No

\*Have any political contributions totaling one hundred dollars (\$100) or more been made with the past 24 months to any **current** or **former member** of City Council, any **candidate** for City Council, or to any **political action committee** that contributes to City Council elections, by any individual or business entity identified in areas (1), (2), (3) or (4), or by officers, owners of any business entity identified in areas (1), (2), or (3)?  Yes  No

\*Are you aware of the facts which would raise a "conflicts-of-interest" issue as defined by the City's Ethics Code?  Yes  No

Attach additional documentation regarding this disclosure if needed. Use the paper clip icon at the bottom left of the window. 



## City of San Antonio Discretionary Contracts Disclosure

Office of the  
City Clerk

### Acknowledgements

- I understand that this form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever comes first.
- I understand that a person or entity who seeks or applies for a city contract or any other person acting on behalf of such person or entity, is prohibited from contacting city officials and employees regarding such a contract after a Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with city officials and employees, such contact will be done in accordance with procedures incorporated into the solicitation document. Violation of Section 2-61 Prohibited Contacts During Contract Solicitation Period of the City of San Antonio Ethics Code by respondents or their agents may lead to disqualification of their offer from consideration.

### Oath

- I swear or affirm that the statements contained in this Discretionary Contracts Disclosure Form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

\*Your Name: Pamela Bain

Title: Board Chairperson

\*Company Name or d/b/a: Carver Development Board

Date: 05/05/2009

When complete, use the **Print** button to make a copy for your records.  
Use the **Submit** button to send this form for processing.

If necessary to mail, send to:  
Purchasing  
P.O. Box 839966  
San Antonio, Texas 78283-3996