

STATE OF TEXAS \*

COUNTY OF BEXAR \*

CITY OF SAN ANTONIO \*

**DELEGATE AGENCY CONTRACT  
WITH  
ST. VINNYS BISTRO**

This Contract is between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Human Services ("Managing City Department") pursuant to Ordinance No. 2023-09-14-0623, dated September 14, 2023, and St. Vinnys Bistro ("AGENCY") (together, the "Parties").

**Background**

- A. The City adopted a budget for the expenditure of City of San Antonio General or Grant Fund Operating funds ("General Fund" or "Grant Fund," as applicable), which included an allocation of funds for consolidated human development services; and
- B. The City wishes to engage the AGENCY to carry out one or more projects for which allocations have been made.

**Contract**

The Parties agree as follows:

**I. SCOPE OF WORK**

- 1.1 The terms and conditions of this Contract apply to each and every project (further described in the **Project Schedule**, attached as **Attachment I**) for which the City engages AGENCY to carry out under this Contract unless a provision or an attachment to this Contract pertaining to a specified project clearly creates an exception or states otherwise; in such cases, the exception or variance set forth in the provision or applicable attachment governs with respect to the specified project only. Wherever in this Contract, a process, restrictions or parameters are established on AGENCY's use of Contract funds, that process, restriction or parameter applies to each project independent of the others as if a separate, distinct contract were entered into for each project, unless the Contract provision clearly indicates that the projects or funding allocated to AGENCY shall be considered together as a whole for the purposes of the Contract provision's application.
- 1.2 City may enforce, or waive enforcement of any of, the terms of this Contract, in connection with each project under this Contract without prejudice to any rights or remedies (whether set forth in this Contract or provided for by law or in equity) which might otherwise be available to the City in connection with the other projects under this Contract.
- 1.3 Project specific requirements for each Project shall be compiled in a Project package, consisting of a: (a) **Scope of Work and Scorecard**; (b) **Budget**; and (c) **Supplemental Grant Contract and/or Terms and Conditions (if any)**.

All Project packages are grouped together in **Attachment II** and incorporated herein as if fully set forth. All references throughout the Contract to the **Scope of Work and Scorecard**, the **Budget**, or to the **Supplemental Grant Contract and/or Terms and Conditions (if any)**, refer to the respective document for each project. For example, wherever in this Contract reference is made to the Budget, such reference is being made to the applicable Budget for each project.

- 1.4 The AGENCY will provide, oversee and administer all activities and services in a manner satisfactory to the City and in compliance with the applicable **Scope of Work and Scorecard** for the Project.

## II. TERM

- 2.1 This Contract shall begin on October 1, 2023 and shall terminate on September 30, 2024 (FY 24). The Contract shall automatically renew for a second year (October 1, 2024 through September 30, 2025 (FY 25)), subject to (a) the City's receipt of additional monies sufficient to fund FY 25; (b) the AGENCY satisfactorily meeting the performance requirements of this Contract, as solely determined by the City, and (c) the prior approval by the City Council of San Antonio of funding for FY 25, as evidenced by an ordinance duly passed and approved.
- 2.2 The City reserves the right to (i) determine that one or more programs will not be renewed for FY 25, in which case the City will notify AGENCY prior to the renewal period; (ii) renegotiate the terms and conditions (e.g., Scope of Work, Scorecard and Budget) for FY 25, and amend the contract accordingly, or terminate the Contract if the parties are unable to mutually agree on new terms. The AGENCY shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination.
- 2.3 FY 24 funds that are not expended by AGENCY shall *not* carry forward into FY 25 if AGENCY fails to encumber or invoice the City for allowable costs by FY 24 deadlines established herein, unless the City *specifically* approves the carry forward in writing. City's written approval shall specify any conditions associated with carry forward, which may include the requirement that carry forward funds must be expended prior to expenditure of FY 25 awarded funds, a description regarding the benefit to the City and the public purpose to be served in such approval. A copy of the written approval shall be appended to AGENCY's FY 25 digital or written records kept by the City.

## III. CONSIDERATION

- 3.1 The City will reimburse AGENCY in accordance with the applicable Budget for the Project, and all subsequently authorized budget revisions or budget amendments to that budget, and in a total Contract amount not to exceed **\$148,950.00** for each term.
- 3.2 The Funding Guide includes terms and conditions associated with multiple grants awarded by the Managing City Department to contractors. AGENCY shall comply with the applicable grant specific terms and conditions in the **Funding Guide** and the **Supplemental Grant Contract and/or Terms and Conditions, if any**, attached hereto as **Attachment III and Attachment II(c), respectively**, and incorporated herein as if fully set forth.
- 3.3 The City's obligations under this Contract are contingent upon the actual receipt of adequate General or Grant Fund revenue, as applicable, to meet City's liabilities under this Contract. If the City does not receive sufficient funds to make payments pursuant to this Contract or if the award of Grant Funds is reduced, then City, at its sole discretion, may elect to terminate this Contract or reduce the **Scope of Work** and compensation associated with the applicable Project. City shall notify AGENCY in writing of its determination within a reasonable time.
- 3.4 AGENCY's total agency revenues and expenses derived from both non-City sources and from the City is deemed AGENCY's Total Budget:

$$\text{Total Budget} = \text{non-City revenue/expenses} + \text{City Revenue/expenses}$$

The percentage of Total Budget derived from non-City sources must meet the following "match" requirements:

- (A) If AGENCY receives an aggregate amount of \$1,000,000.00 or more in City funds from all City funded contracts, then AGENCY must obtain at least thirty-five percent (35%) of its Total Budget from non-City sources (i.e., no more than sixty-five percent (65%) of its Total Budget is derived from the City).
- (B) If AGENCY receives less than an aggregate amount of \$1,000,000.00 in City funds from all City funded contracts, then AGENCY shall obtain fifty percent (50%) of its Total Budget from non-City sources (i.e., no more than fifty percent (50%) of its Total Budget is derived from the City).

City shall require sufficient information that AGENCY's match is in place within 30 days of contract execution, and may request, at the end of each quarter, information and documentation confirming that AGENCY has expended or is on course to expend its "match" requirement before the end of the Contract term. City has no obligation to provide any funds until AGENCY demonstrates having secured or expended the required percentage of matching funds. Pell grants and other awards received by individuals, and in-kind contributions shall not count toward its matching fund requirements. If AGENCY does not provide City with acceptable information and documentation that the required amount of non-City funds have been expended, then City may reduce or recapture funds pursuant to Section 4.6 to comply with the match requirement. AGENCY acknowledges that reduction or recapture of funds pursuant to Section 4.6 does not require the approval of City Council.

- 3.5 AGENCY understands and agrees that the submission of certain documents by October 16, 2023 are necessary for proper administration of this Contract and that Contract funds are subject to reallocation to another entity should AGENCY fail to submit the applicable documents by the stated deadline. City shall notify AGENCY by October 9, 2023 which documents are outstanding and that AGENCY's funding may be reallocated pursuant to this Section. Extensions may be granted on a case-by-case basis and as solely determined by the Director of the Managing City Department.

#### IV. COST REIMBURSEMENT; FISCAL RESPONSIBILITY

- 4.1 ***Allowable Costs*** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XI for the proper administration and performance of the services to be provided under this Contract.* The City's payment obligation under this cost reimbursement Contract is limited to making reimbursements for Allowable Costs incurred as a direct result of City-funded services provided by the AGENCY in accordance with this Contract and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Project Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- 4.2 **Advance payment.** In case of unforeseen or special circumstances, AGENCY may submit to the Director of the Managing City Department, in the form prescribed by the City, a written request for advance payments, including the specific reason for such request no less than ten (10) business days before the requested date of payment. Each request will be considered by the Director of the Managing City Department on a case-by-case basis. The Director of the Managing City Department's shall have sole discretion to approve or disapprove a request. If advance payments are approved, then:
- (A) AGENCY's payments to its vendors using funds advanced by the City shall be paid in a prompt and timely manner but no later than 10 calendar days after the AGENCY is notified that an advance payment has been made available so long as services have been performed by the vendor.
  - (B) AGENCY must deposit advanced City funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If AGENCY's total deposits in the bank, including all City funds deposited with the bank, exceed the FDIC insurance limit, then the AGENCY must arrange to automatically have the excess collaterally secured. AGENCY must provide City a copy of the collateral agreement with the AGENCY's banking institution. Advanced funds that cause the AGENCY's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). AGENCY shall maintain the FDIC insured bank account in which City funds are deposited and its recordkeeping in a manner that will allow City to track, in detail, expenditures made pursuant to this and all other City contracts.
  - (C) The City may, in its sole discretion, either 1) deduct pro rata from the remaining monthly reimbursements amounts necessary to offset the amount advanced, or 2) deduct from a single subsequent monthly reimbursement the full amount advanced to AGENCY. The City will consider factors such as projected allowable costs and other pertinent indicators such as AGENCY's financial stability. AGENCY shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

- 4.3 AGENCY's Request for Payment. AGENCY shall submit to City no later than the 15<sup>th</sup> of every month a monthly Request for Payment in the form prescribed by City, which details:
- (A) the specific costs (by category and by program account number) AGENCY expensed in the previous month for the services delivered as described in Article I; and
  - (B) supporting documentation of costs as may be required by the Director of the Managing City Department (e.g., original or certified copies of invoices, cancelled checks, AGENCY's general ledger and/or receipts to verify invoiced expenses); and
  - (C) the Program Income received or projected during the same time period.
- 4.4 City Payment. City shall pay for eligible expenses and undisputed amounts in submitted Requests for Payments within 30 calendar days of receiving a properly completed, documented and approved Request for Payment.
- 4.5 Final Request for Payment. The AGENCY shall submit to City all final requests for payment no later than 30 days from the expiration or early termination date of this Contract, unless AGENCY receives written authorization from the Director of the Managing City Department allowing AGENCY to submit a request for payment after the 30-day period.
- 4.6 Return of Funds. Within 10 business days of City's written notification, or the AGENCY becoming aware of its existence, AGENCY must return to the City any funds, credits that are on-hand or collected, or advance payments that:
- (A) exceed allowable costs incurred during the Contract term; or
  - (B) for which AGENCY fails to deliver services as specified under the Contract.
- Any amounts not returned within 10 business days may, at City's option, be subject to offset against future funding obligations by City. *"Business day" means 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.*
- 4.7 Cost Rules.
- (A) Administrative Overhead. Administrative overhead costs may not exceed twenty percent (20%) of the funding provided for each Project under this Contract. More stringent administrative overhead costs limitations may be applicable due to grant regulations associated with Contract or specific Project funding. AGENCY shall provide City detailed administrative costs by line item with its annual program budget for each project.
  - (B) AGENCY shall establish, submit with supporting documentation and use a Cost Allocation Plan for each of AGENCY's annual Project budgets by the deadline established by the City. The ***Cost Allocation Plan*** is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions and overhead not solely devoted to the Projects funded by this Contract. The ***Cost Allocation Plan*** substantiates how the costs of a program are charged to a particular cost category or to the program and ensures that the City is paying only its share of the costs for services, overhead, and staffing.
  - (C) AGENCY costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
  - (D) AGENCY shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director of the Managing City Department.
  - (E) The use or purchase of gift cards is not allowed and not reimbursable under this Contract.
- 4.8 Each year AGENCY shall submit to the Managing City Department a form 990 or 990T no later than 30 days after Internal Revenue Service (IRS) deadlines for completion. If filing an extension, AGENCY shall notify the City in writing of the extension and the anticipated date of filing with the IRS. AGENCY shall submit the 990 or 990T to the Managing City Department no later than 30 days after AGENCY files under the extension.

- 4.9 The AGENCY warrants that any and all taxes that the AGENCY 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 and throughout the term of the Contract.
- 4.10 AGENCY shall comply with the following check writing and handling procedures:
- (A) No signing of blank checks.
  - (B) No checks made payable to cash or bearer with the exception of those for petty cash reimbursement. Petty cash checks must not exceed 1) \$100.00 maximum per check and 2) \$200.00 in aggregate per location for any given calendar month during the term of this Contract unless AGENCY receives prior written approval from the Managing City Department to exceed the limit. Requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.
  - (C) Checks issued by City to AGENCY shall be deposited into the appropriate bank account immediately or by the next business day after AGENCY's receipt of each such check and shall never be cashed for purposes of receiving any of the face amount back.
- 4.11 AGENCY shall comply with the following:
- (A) ***"Program Income"*** means AGENCY earnings from activities under this Contract or from AGENCY's management of funding provided or received under this Contract. Program Income includes, but shall not be limited to,
    - 1. *interest income;*
    - 2. *usage or rental/lease fees;*
    - 3. *income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of AGENCY provided as a result of this Contract, and*
    - 4. *payments from clients or third parties for services rendered by AGENCY pursuant to this Contract.*

AGENCY must not charge fees or solicit donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.
  - (B) The AGENCY must fully disclose and be accountable to the City for all Program Income. AGENCY shall provide 30 days' written notice detailing the type, time, and place of all activities, anticipated to generate program income. Within 30 days after activity that generates program income, AGENCY must submit a statement of expenditures and revenues to the Managing City Department. The statement is subject to audit verification by Managing City Department. Failure by AGENCY to report program income as required is grounds for suspension, cancellation, or termination of this Contract.
  - (C) At the sole option and upon prior written direction from the Director of the Managing City Department, AGENCY will either:
    - 1. return Program Income funds to City within the timeframe that may be specified by the Director of the Managing City Department; or
    - 2. retain Program Income funds to be added to the applicable Project and used to further the eligible Project objectives but only if the proposed expenditures are approved by the City; or
    - 3. deduct Program Income funds from the total applicable Project cost for the purpose of determining the net cost reimbursed by the City. In this case, AGENCY must submit all reports required by the Managing City Department within the timeframe specified in the Contract.
  - (D) AGENCY must include this Section 4.11, in its entirety, in all of its subcontracts involving income-producing services or activities.
- 4.12 The City shall not be obligated to any third parties of AGENCY (including any subcontractors or third-party beneficiaries of AGENCY) under this Contract.

- 4.13 AGENCY shall maintain a financial management and accounting records system that provides the following:
- (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 VII of this Contract. If accrual basis reports are required, the AGENCY 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. The 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 AGENCY shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
  - (D) identification of separate funds by funding source and project;
  - (E) 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;
  - (F) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the AGENCY;
  - (G) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with the City;
  - (H) supporting source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City); and
  - (I) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the applicable 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.
- 4.14 The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all AGENCY's systems of internal accounting and administrative controls before the release of funds. The City may, in its sole discretion, require the AGENCY 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 Contract.
- 4.15 AGENCY shall maintain financial stability and operate in a fiscally responsible and prudent manner. City may immediately terminate this Contract if the City finds, in its sole discretion, that AGENCY's financial condition may impact performance under this Contract. The City may consider:
- (A) evidence such as the apparent inability of AGENCY to meet its financial obligations;
  - (B) items that reflect detrimentally on the credit worthiness of AGENCY;
  - (C) pending litigation, liens and encumbrances on the assets of AGENCY;
  - (D) the appointment of a trustee, receiver or liquidator for all or a substantial part of AGENCY's property; or
  - (E) institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against AGENCY. AGENCY shall provide any records requested by City that City deems necessary to make such a determination.

## V. CONTRACT ADMINISTRATION

- 5.1 City-Supported Projects. AGENCY shall publicly acknowledge that the Projects funded under this Contract are supported by the City of San Antonio, Department of Human Services. AGENCY must include written acknowledgment of the City's financial support in all Project-related presentations, press releases, flyers, brochures and other informational material prepared and distributed by AGENCY. AGENCY shall obtain the City's prior approval of the language and City marks or logos, as applicable, to be used.
- 5.2 AGENCY shall use the online Contract Management System provided by the City for the purpose of submitting all Contract related documents, including, but not limited to, monthly reports, budgets, budget

revisions and requests for payment.

- 5.3 If the Project is grant funded, the AGENCY shall comply with the applicable grant specific terms and conditions in the Funding Guide and the **Supplemental Grant Contract and/or Terms and Conditions, if any**, for each Project.
- 5.4 If any disagreement or dispute arises between the Parties that pertains to this Contract or any applicable governing rules, regulations, laws, codes or ordinances, then the City Manager, as the City representative ultimately responsible for all matters of compliance with City of San Antonio rules and regulations and the Grantor's rules or regulations, if Grant funded, shall have the final authority to render or secure an interpretation.
- 5.5 The City may, during normal business hours, inspect the operating facility used by the AGENCY for the administration of this Contract and may require safety or security measures such as locks, alarms, security/surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment funded by this Contract.
- 5.6 AGENCY shall provide to the Managing City Department all information requested by the Managing City Department relating to the AGENCY's Board functions, including, but not limited to:
- (A) Roster of current Board Members (name, title, address, telephone number and e-mail address);
  - (B) Current and any amendments to Bylaws and Charter;
  - (C) Terms of Officers;
  - (D) Schedule of anticipated board meetings for current Fiscal Year; and
  - (E) Board Agendas or approved meeting minutes upon request.
- 5.7 AGENCY must have or shall comply with the following regarding personnel management:
- (A) An employee ethics or integrity policy that outlines a) the requirements for employees to conduct themselves in an ethical manner consistent with the values of the AGENCY; and b) the process for identifying, investigating, and enforcing potential breaches of the policy.
  - (B) Internal project management procedures to mitigate the risk of theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to reasonably prevent fraud and program abuse. These procedures shall specify the consequences to AGENCY's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary.
  - (C) The employee ethics policy and the project management procedures will be provided to the Managing City Department upon request by the Managing City Department.
  - (D) AGENCY shall immediately notify the City if any unethical, illegal, or potentially fraudulent activity involves or is related to funds provided by the City and shall provide the City with timely updates on any investigation or inquiry into the activity.
  - (E) AGENCY represents and warrants that it has conducted a criminal background check, at its own expense, for employees providing services related to this Contract. No employee of AGENCY shall be eligible to perform services related to this Contract if he or she, (1) has been convicted of, or was placed in a pre-trial diversion program for, any crime involving dishonesty or breach of trust including, but not limited to, check kiting or passing bad checks; embezzlement, drug trafficking, forgery, burglary, robbery, theft, perjury; possession of stolen property, identity theft, fraud, money laundering, shoplifting, larceny, falsification of documents; and/or (2) has been convicted of any weapons or violent crime including but not limited to homicide, attempted homicide, rape, child molestation, extortion, terrorism or terrorist threats, kidnapping, assault, battery, and illegal weapon possession, sale or use; or (3) is listed on the national register of sex offenders.
  - (F) The AGENCY agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
  - (G) Chief Executive Officers (CEOs), directors and other management positions may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, ("Relatives")

who are involved in any capacity with program delivery supported through City funds. Relatives may be co-workers in the same Project but only in non-supervisory roles.

- (H) AGENCY represents and warrants that AGENCY's employees and its subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all licensing, training, and competency standards promulgated by relevant authoritative or professional bodies. The AGENCY will provide the City with the names and license registration of any employees of AGENCY regulated by state law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- (I) AGENCY must include written job descriptions in personnel folders for each position in the organization funded through this Contract. Job titles and descriptions in the **applicable Project Budget** that affect a salary or range increase may not be changed without the prior written approval of the Director of the Managing City Department. AGENCY understands that City funding is subject to availability of revenue as stated in Section 3.3 of this Contract.
- (J) The Director of the Managing City Department may, in his or her sole discretion, approve reimbursement of pay to full time, permanent employees for other than annual or personal leave for the following:
  - 1. To attend Armed Services training, up to 15 business days;
  - 2. To serve as a juror;
  - 3. To attend the funeral of someone in the immediate family, up to 3 days as long as not charged to annual or personal leave. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister, brother, step-brother, spouse, child, and relative, if such relative is actually a member of the employee's household, if he or she was the legal guardian of the employee, or if the employee had legal guardianship of the relative.
  - 4. To attend seminars or workshops.

5.8 The following applies to equipment or intellectual property that was purchased or created with City funds:

- (A) Ownership. The City shall own all tangible property, including but not limited to, vehicles, equipment and furniture, purchased with funds received through the City. The tangible property shall, at the City's sole option, be delivered to the City upon the expiration or termination of this Contract. The AGENCY must relinquish and transfer possession of and, if applicable, title to tangible property without the requirement of a court order. Tangible property that has reverted to the AGENCY 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. No tangible property purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department.
- (B) AGENCY shall maintain records for and provide an annual inventory of tangible property purchased with City funds, to include:
  - 1. A description of the item, including the model and serial number, if applicable;
  - 2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;
  - 3. An indication of whether the item is new or used;
  - 4. The vendor's name (or transferred from);
  - 5. The location of the property;
  - 6. The property number shown on the property tag; and
  - 7. A list of disposed items and disposition.
- (C) AGENCY shall safeguard, maintain and fully insure all City-funded property against fire, loss and theft. The AGENCY is also solely responsible for reporting and replacing with like property all lost, stolen, missing, damaged, or destroyed property purchased or leased with City funds. All replacement property will be treated in the same manner as property purchased with City funds. All lost, stolen, missing, damaged and/or destroyed property shall be reported to law enforcement agencies as appropriate. The AGENCY 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 AGENCY discovers the property having been lost, stolen, missing, damaged and/or destroyed.



The report submitted by the AGENCY to the Managing City Department must include:

1. A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
2. A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
3. 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.

(D) **Ownership of Intellectual Property.** The Projects shall be and remain the sole and exclusive proprietary property of City. The Projects shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Projects and all rights therein shall be solely vested in City. AGENCY hereby grants, sells, assigns, and conveys to City all rights in and to the Projects and the tangible and intangible property rights relating to or arising out of the Projects, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Projects shall be solely vested in City. AGENCY agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. If the City is unable, after reasonable effort, to secure AGENCY's signature on any documents relating to Intellectual Property Rights in the Projects, including without limitation, any letters patent, copyright, or other protection relating to the Projects, for any reason whatsoever, AGENCY hereby irrevocably designates and appoints City and its duly authorized officers and agents as AGENCY's agent and attorney-in-fact, to act for and in AGENCY's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by AGENCY. Provided, however, nothing contained in this Contract is intended nor shall it be construed to require AGENCY to transfer any ownership interest in AGENCY's best practice and benchmarking information to the City.

5.9 AGENCY shall comply with the following regarding City-funded travel:

- (A) Travel costs are allowable if:
1. they are approved in the budget;
  2. supported by detailed documentation, for example, conference costs to include itineraries and documentation certifying conference attendance;
  3. travel costs (including per diem rates) are do not exceed those allowed under the City's travel policies and conform to the reimbursement rates under the United States General Services Administration; and
  4. transportation fares are at economy class rates.
- (B) Mileage reimbursement rates must not exceed the City's policy for mileage reimbursement and must comply with IRS rules. To be eligible for mileage reimbursement, the employees must
1. possess a valid Texas Driver's License and liability insurance as required by law; and
  2. record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep the record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City.

AGENCY 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 AGENCY.

5.10 The Department of Human Services participates in a Dual Generation initiative with the United Way of Bexar County and San Antonio. To continue to promote best practices, AGENCY is encouraged to adhere to the following principles while performing the **Scope of Work**:

- (A) A multi-generational approach – Partners/AGENCIES understand that they can more effectively address a child’s needs within the context of the capacity and needs of the entire family and vice versa.
  - (B) Families are partners - A coaching approach, instead of a traditional case management model, supports family-centered actions to work with the family toward their goals. Families inform the work of the partnership and participate in collective decision-making.
  - (C) Mutual accountability and shared outcomes – As no single partner/AGENCY alone can guarantee positive outcomes for families all partners have a vested interest in collectively supporting families and each other. Partners/AGENCIES remain accountable for their contribution to family wellbeing but understand the limits of their contribution and their need to rely on other partners/AGENCIES.
  - (D) Collaboration and coordination – Partners/AGENCIES participate in regular forums with other providers serving the same families and coordinate their work both at the family and partnership level.
  - (E) Data sharing and continuous learning – Partners/AGENCIES routinely share and review individual and aggregate level performance data to inform and improve their work with families and as a partnership. Partners/AGENCIES commit to using a client level shared data platform as source for this learning.
- 5.11 Leadership Training. AGENCY represents that each of its board members, executive directors, chief executive officers and chief financial officers, as applicable, have received training within the last two years, or will receive training within the first quarter of execution of this Contract, covering the key legal, fiscal and ethical responsibilities of its leadership, including the responsibility to:
- (A) Have a working knowledge of, and facilitate the implementation/enforcement of, policies and programs;
  - (B) Take an active part in the budget review and planning process;
  - (C) Use fair, independent judgment and due care in conducting the business of the organization;
  - (D) Comply with conflict of interest guidelines and requirements;
  - (E) Understand and exercise the duties of care and of loyalty to the organization;
  - (F) Promote financial accountability so as to prevent fraud, waste and abuse; and
  - (G) Participate in key personnel matters to ensure due process, compliance with laws, and responsible leadership.
- 5.12 The AGENCY shall ensure only Synchronous Instruction and Services are provided as part of the Projects under this Contract. Asynchronous Instruction or Services provided as part of the Projects will not be eligible for reimbursement without the prior written approval of the Director of the Managing City Department. ***Synchronous Instruction and Services means live, scheduled, interactive classes and services conducted either in person or virtually, between AGENCY staff and clients in real-time.***
- 5.13 Unplanned closures impacting program services shall be subject to cost reimbursement reductions at the discretion of the Director of the Managing City Department.

## VI. AUDIT

- 6.1 If AGENCY expends \$750,000 or more of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the AGENCY must complete an independent audit and submit the audit report within the earlier of:
- (A) 30 calendar days after receipt of the auditor’s report(s); or
  - (B) 9 months after the end of AGENCY’s fiscal year; or
  - (C) 9 months after the expiration or early termination of this Contract.

AGENCY must furnish the Managing City Department a copy of the corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within 30 calendar days of receipt of the audit report or upon submission of the corrective action plan to the auditor.

If AGENCY is notified of federal, state, or local entities that have conducted program reviews and/or audits

of the AGENCY or its programs of any findings about accounting deficiencies, or violations of AGENCY's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within 10 calendar days of receipt of the report.

- 6.2 If AGENCY expends less than \$750,000 of City or federal dollars combined, whether provided under this Contract or under multiple City contracts, then the Contactor must complete and submit an audited financial statement(s) within the earlier of:

- (A) 9 months following the end of AGENCY's fiscal year; or
- (B) 9 months following expiration or early termination of this Contract.

The financial statement must include the following 1) a balance sheet and income statement prepared by a bookkeeper, 2) a cover letter signed by AGENCY attesting to the correctness of the financial statement, and 3) a schedule of receipts and disbursements by budgeted cost category for each project funded by the City.

- 6.3 If AGENCY receives or expends more than \$750,000 in federal funds from the City, then an audit must be conducted 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 (Uniform Guidance). AGENCY shall submit copies of its annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or 9 months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana.

AGENCY may submit reports through the following website:

<https://harvester.census.gov/facides/Account/Login.aspx> 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, AGENCY may submit the completed report by mail to:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10<sup>th</sup> Street  
Jeffersonville, Indiana 47132

AGENCY agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from AGENCY's Single Audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.

- 6.4 The City may conduct or have an audit conducted or conduct a review of the use of funds and documentation associated with this Contract. City is entitled to determine the scope of any audit. 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. AGENCY must make available to City all accounting and Project records.
- 6.5 AGENCY, 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, must make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract 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 Contract. The records shall be maintained for the required retention period, except if there is pending litigation or if the audit report has not been accepted, then the AGENCY shall retain the records for as long the City requires retention. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.
- 6.6 If an audit or examination determines that the AGENCY has expended funds or incurred costs which may be

inconsistent with this Contract or if the applicable state or federal governing agency raises compliance issues, then AGENCY shall be notified and provided an opportunity to address the issues.

- 6.7 City shall provide AGENCY written notification if reimbursed expenses or charges are disallowed by the City because of review or audit findings. The Managing City Department may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require AGENCY to fully refund the disallowed amounts by cashier's check or money order within ten days after receipt of written notification. AGENCY may not reduce a Project's expenditures if the City opts to deduct disallowed expenses or charges from future reimbursements.
- 6.8 Any expenses for the collection of delinquent debts owed by AGENCY are the sole responsibility of the AGENCY and shall not be paid from any Project funds.
- 6.9 If the City determines, in its sole discretion, that AGENCY 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 AGENCY pay for such audit from non-City resources.

## VII. RECORDS AND REPORTING

- 7.1 The Managing City Department is responsible for monitoring, fiscal control, and evaluation of Projects funded under this Contract.
  - (A) AGENCY shall submit to the Managing City Department via the online Contract Monitoring System a report no later than the 15<sup>th</sup> day of every month detailing the actual quantitative values of services delivered and reported outcomes and shall attach client-level documentation supporting the same, for the month preceding the submission. Monthly client-level performance support documentation must be in Microsoft Excel format, or equivalent. All other performance support documentation provided as part of the monthly performance submissions will be deemed unresponsive. If the Contract Monitoring System is unavailable, AGENCY shall submit information via the alternative means established by the Managing City Department. The **Scorecard Attachments** containing projected performance measures for the entire Contract term is attached.
  - (B) At such times and in such form as may be required by the Managing City Department, AGENCY shall prepare and submit to the Managing City Department or the Grantor of applicable grant funds any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Contract.
  - (C) Within 30 days from the expiration or termination of this Contract, AGENCY shall submit all final reports and deliverables to City along with a receipt for all sums and a release of all claims against all Projects.

The AGENCY represents that all information in reports submitted to City is accurate and that supporting documentation shall be maintained. The AGENCY shall, upon reasonable request, allow and facilitate interviews or discussions with its personnel, board members and Project participants.

- 7.2 AGENCY shall not disclose information pertaining to the Projects or other information and materials prepared for, provided by, or obtained from City, which is marked "confidential" or for which City informs AGENCY is "confidential," including, without limitation, reports, records, information, Project evaluations, Project designs, data, and other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations under this Contract. AGENCY shall protect the Confidential Information and shall take the necessary 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, AGENCY 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. AGENCY shall establish specific procedures designed to meet the obligations of this Article VII, Section 7.2, including, but not limited to

execution of confidential disclosure agreements, regarding the Confidential Information with AGENCY's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VII, Section 7.2 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 Contract. Upon request at the expiration or termination of this Contract, AGENCY shall deliver to City all copies of materials related to the Projects, including the Confidential Information.

- 7.3 If applicable, AGENCY shall execute and comply with the **HIPAA Business Associate Agreement**, attached hereto as **Attachment IV** and incorporated herein as if fully set forth, which is intended to protect the privacy and provide for the security of Protected Health Information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- 7.4 In accordance with Texas law, AGENCY acknowledges and agrees that all local 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. AGENCY represents that no local government records produced by or on the behalf of AGENCY pursuant to this Contract shall be the subject of any copyright or proprietary claim by AGENCY.
- 7.5 AGENCY shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in Section 11.2(C) of this Contract.

#### VIII. INSURANCE

- 8.1 AGENCY agrees to comply with the following insurance provisions:
- (A) No later than 30 days before the commencement of this Contract, AGENCY must provide a completed Certificate(s) of Insurance to City's Department of Human Services. The certificate must be:
    - clearly labeled with the legal name of the event in the Description of Operations block;
    - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance);
    - properly endorsed and have the agent's signature, and phone number,
  - (B) Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by City's Department of Human Services. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
  - (C) If the City does not receive copies of insurance endorsement, then by executing this Contract, AGENCY certifies and represents that its endorsements do not materially alter or diminish the insurance coverage during the effective period of this Contract.
  - (D) The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Contract based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
  - (E) AGENCY shall obtain and maintain in full force and effect for the duration of this Contract, at AGENCY'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.
  - (F) If the AGENCY claims to be self-insured, they must provide a copy of their declaration page so the City can

review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury d. Contractual Liability e. Sexual Abuse / Molestation**	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence
5. Professional Liability – (Claims-made Coverage)	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
<b>** Required for projects involving services to children</b>	

(G) AGENCY must require, by written contract, that all subcontractors providing goods or services under this Contract obtain the same insurance coverages required of AGENCY and provide a certificate of insurance and endorsement that names AGENCY and City as additional insureds. AGENCY shall provide City with subcontractor certificates and endorsements the subcontractor starts work.

(H) If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. AGENCY must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

City of San Antonio  
Department of Human Services  
Attn: Director  
100 W. Houston Street, 9<sup>th</sup> Floor  
San Antonio, Texas 78205

(I) AGENCY's insurance policies must contain or be endorsed to contain the following provisions:

- Name City and 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 City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- AGENCY shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and
- Provide 30 days advance written notice directly to City of any suspension, cancellation,

non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- (J) Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, AGENCY shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend AGENCY's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- (K) In addition to any other remedies City may have upon AGENCY's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order AGENCY to stop work and/or withhold any payment(s) which become due to AGENCY under this Contract until AGENCY demonstrates compliance with requirements.
- (L) Nothing contained in this Contract shall be construed as limiting the extent to which AGENCY may be held responsible for payments of damages to persons or property resulting from AGENCY's or its subcontractors' performance of the work covered under this Contract.
- (M) AGENCY's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Contract.
- (N) The insurance required is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- (O) AGENCY and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

#### IX. INDEMNITY

##### 9.1 AGENCY AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

**AGENCY 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 AGENCY'S activities under this CONTRACT, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, 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. IF AGENCY 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.**

**The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**AGENCY shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or AGENCY known to AGENCY related to or arising out of AGENCY'S activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at AGENCY's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense**

**without relieving AGENCY of any of its obligations under this paragraph.**

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

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

#### **X. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY**

#### **THIS SECTION INTENTIONALLY LEFT BLANK**

#### **XI. COMPLIANCE WITH LAWS**

- 11.1 AGENCY shall comply with all applicable federal, state and local laws, rules and regulations, codes, charters, ordinances, rules, regulations, policies, and procedures, and any and all amendments or additions to these as they may be promulgated, applicable to the services provided by, or funds received by AGENCY hereunder, as directed by the City or as required in this Contract. Failure to comply with applicable laws may subject the AGENCY to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.2 Additionally, AGENCY shall comply with the following:
- (A) If using City of San Antonio General Funds, expenditures shall be made in accordance with:
    - 1. Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
    - 2. Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
  - (B) The AGENCY certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988.
  - (C) Local Government Records Act of 1989 official record retention schedules found at <http://www.tsl.state.tx.us/slr/recordspubs/gr.html>
  - (D) Government Code Chapter 552 pertaining to Texas Public Information Act found at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm>. 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 written, produced, 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, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if AGENCY receives inquiries regarding documents within its possession pursuant to this Contract, AGENCY 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 AGENCY shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of AGENCY's receipt of such request.



- (E) As a party to this Contract, AGENCY understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this Contract.
- (F) Additionally, AGENCY shall comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
1. Title VII of the Civil Rights Act of 1964, as amended;
  2. Section 504 of the Rehabilitation Act of 1973, as amended;
  3. The Age Discrimination Act of 1975, as amended;
  4. Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
  5. Fair Labor Standards Act of 1938, as amended;
  6. Equal Pay Act of 1963, P.L. 88-38;
  7. Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and
  8. All applicable regulations implementing the above laws.
- (G) The AGENCY shall comply with all applicable local, state, and federal employment laws including, but not limited to:
1. worker's compensation;
  2. unemployment insurance;
  3. timely deposits of payroll deductions;
  4. 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;
  5. Occupational Safety and Health Act regulations; and
  6. Employee Retirement Income Security Act of 1974, P.L. 93-406.
- (H) In compliance with Texas Government Code Section 2264.053, Restrictions on Use of Certain Public Subsidies, if AGENCY receives a public subsidy and is found to be in violation of 8 U.S.C. 1324a(f), AGENCY 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 AGENCY 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.
- (I) Texas Government Code Prohibitions. For the purposes of this Section, these terms shall have the following definitions:
- "Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).
  - "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

- “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations with 10 or more full time employees that exists to make a profit. “Company” does not include a sole proprietorship.
- “Discriminate against a firearm entity or firearm trade association”: (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

A governmental entity may not enter into a contract with a value of \$100,000 or more with a company for goods or services, unless it receives written verification from the company that:

- (1) in accordance with Texas Government Code §2271.002, it:
  - (i) does not boycott Israel and
  - (ii) will not boycott Israel during the term of the Contract;
- (2) In accordance with Texas Government Code §2274.002, it:
  - (i) does not boycott energy companies and
  - (ii) will not boycott energy companies during the term of the Contract;
- (3) In accordance with Texas Government Code §2274, it:
  - (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and
  - (ii) will not discriminate against a firearm entity or firearm trade association during the term of the Contract; and
- (4) In accordance with Texas Government Code §2252.152, it:
  - (i) is not identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§2270.0201 or 2252.153, which specifically lists companies with business operations in Sudan, in Iran, or with designated foreign terrorist organizations and
  - (ii) will notify CITY should it be placed on such a list while under contract with the City.

By submitting an offer to or executing contract documents with the City of San Antonio, AGENCY hereby certifies that it does not and will not engage in any of the prohibitions in this subsection. City hereby relies on AGENCY’s certification(s). If found to be false, City may terminate the Contract for material breach.

11.3 In addition, if AGENCY received federal grant funds through this Contract, AGENCY agrees that:

- (A) AGENCY shall comply with the Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 et al. entitled Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), as applicable to the funds received by AGENCY.
- (B) If federal funds are in excess of \$150,000, AGENCY shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. AGENCY agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this Contract and the appropriate EPA Regional Office. Additionally, AGENCY agrees to include these requirements in each subcontract to this Contract exceeding \$150,000 financed in whole or in part with federal funds.

- (C) AGENCY shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. AGENCY agrees to include within its subcontracts a requirement that its subcontractors comply with this provision.
- (D) This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the AGENCY is required to verify that none of the AGENCY's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). AGENCY must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by City. If it is later determined that AGENCY did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- (E) AGENCY has tendered to the City a Certification of Restrictions on Lobbying in compliance with the Byrd Anti-lobbying Amendment (31 U.S.C. §1352), and any applicable implementing regulations, if AGENCY applied for or bid for an award exceeding \$100,000.00 from the City. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the City who in turn will forward the certification(s) to the federal awarding agency.
- (F) In the performance of this Contract, AGENCY shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) Competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contract performance requirements; or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (G) Prohibition on Contracting for Covered Telecommunications Equipment or Services.
- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim).
- (b) *Prohibitions.*
- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- (2) Unless an exception in paragraph (c) of this clause applies, the AGENCY and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing:

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

- i. Are *not used* as a substantial or essential component of any system; and
- ii. Are *not used* as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event AGENCY identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the AGENCY is notified of such by a subcontractor at any tier or by any other source, AGENCY shall report the information in paragraph (d)(2) of this clause to the City, unless elsewhere in this Contract are established procedures for reporting the information.

(2) AGENCY shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, AGENCY shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* AGENCY shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

- (H) As appropriate, and to the extent consistent with law, AGENCY should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- (I) In addition to the applicable laws referenced above, AGENCY must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to AGENCY hereunder originated. For example, CDBG AGENCIES are required to follow applicable CDBG regulations.

## XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 The AGENCY warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract or any portion thereof 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 AGENCY or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract 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.
- 12.2 AGENCY covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. AGENCY further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 12.3 AGENCY 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.
- 12.4 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 Contract shall:
- (A) Participate in any decision relating to this Contract 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 Contract or the proceeds thereof.
- 12.5 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (A) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - (B) an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the

- fair market value of the entity; or
- (C) an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

- 12.6 Pursuant to the subsection above, AGENCY warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the City, AGENCY does not cause a City employee or officer to have a prohibited financial interest in the Contract. AGENCY further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

### XIII. TERMINATION

- 13.1 Termination for Cause. Should the AGENCY fail to fulfill in a timely and proper manner, or violate, obligations, covenants, conditions, or stipulations of this Contract, the City shall send written notice to the AGENCY to cure the default and if AGENCY fails to cure the default within the specified cure period, City shall have the right to terminate by sending written notice of such termination and specifying the effective date thereof (which date shall not be sooner than the 10<sup>th</sup> day following the day on which such notice is sent).
- 13.2 Termination for Convenience. This Contract may be terminated in whole or in part by either Party for any reason. Such termination shall specify the effective date thereof, which date shall not be sooner than the 30<sup>th</sup> day following the day on which notice is sent.
- 13.3 The AGENCY shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.
- 13.4 Notwithstanding any other remedy contained in this Contract or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges given the AGENCY for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the AGENCY may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the AGENCY is not in compliance with this Contract. The AGENCY shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.

### XIV. DEBARMENT

- 14.1 AGENCY 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. AGENCY shall provide immediate written notice to City, in accordance with the notice requirements of Article XVII, if, at any time during the term of the Contract, including any renewals hereof, AGENCY learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.
- 14.2 Should the AGENCY be debarred by City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may within City's sole and absolute discretion, be grounds for termination for cause.

### XV. AMENDMENT

- 15.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and AGENCY 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 Contract 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 Contract funding for each Project in an amount not exceeding (a) twenty-five percent (25%) of the project amount or (b) \$25,000.00, whichever is the lesser amount; provided, however, that

the cumulative total of all amendments increasing funding for each Project and executed without City Council approval pursuant to this subsection during the term of this Contract shall not exceed the foregoing amount;

- (B) an increase in Contract funding within Contract amendment caps or parameters set by City Council by Ordinance or policy;
- (C) modifications to the **Scope of Work and Scorecard** for any Project due to the adjustment described in subsection (A) of this Section or for any other reason, so long as the terms of the amendment are reasonably within the parameters set forth in the original **Scope of Work and Scorecard**;
- (D) budget shifts of funds, so long as the total dollar amount of the budget for any Project set forth in the **Project Schedule** of this Contract remains unchanged (these modifications may be accomplished through Budget Revisions);
- (E) modifications to the **Insurance** requirements of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department;
- (F) reduction of the total Contract amount in order to comply with the match requirement expenditure ratio set forth in Section 3.4, and to amend the Project **Budget** accordingly. AGENCY shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 15.1(E); or
- (G) reductions to Article I Scope of Work and Article III Consideration in order to comply with Section 3.4.

#### XVI. ASSIGNMENT AND SUBCONTRACTING

- 16.1 AGENCY shall not assign nor transfer AGENCY's interest in this Contract or any portion thereof without the written consent of the City Council of San Antonio, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.
- 16.2 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City and Grantor of the grant source, if so required by said Grantor. Any work or services for sub-contracting hereunder, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by sub-contractors with this Contract shall be the responsibility of AGENCY. AGENCY agrees that payment for services of any sub-contractor shall be submitted through AGENCY, and AGENCY shall be responsible for all payments to sub-contractors.
- 16.3 AGENCY 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 under this Contract, including those referenced in Section 11.2(A). It is further agreed by the Parties 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 AGENCY failed to comply with this Section, then the AGENCY will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination.
- 16.4 Licenses and Training for Subcontractors. AGENCY warrants and certifies that AGENCY's subcontractors have the requisite training, license or certification to provide the services required under this Contract, and that they meet all competency standards promulgated by relevant authoritative bodies, as applicable to the services provided hereunder.
- 16.5 AGENCY 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.

## XVII. OFFICIAL COMMUNICATIONS

- 17.1 For purposes of this Contract, all official communications and notices among the Parties shall be deemed sufficient if in writing and delivered in person, mailed by overnight or express service or mailed, registered or certified mail, postage prepaid, to the addresses set forth in the respective signature blocks. 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.

## XVIII. PROHIBITED ACTIONS

### 18.1 Political Activity.

- (A) AGENCY 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 Projects provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- (B) AGENCY agrees that no funds provided under this Contract 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.
- (C) The prohibitions set forth in Sections 18.1(A) and 18.1(B) of this Contract include, but are not limited to, the following:
1. 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;
  2. 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;
  3. 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
  4. 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.
- (D) To ensure that the above policies are complied with, AGENCY shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions, which 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 contact person listed on the statement within the Managing City Department. AGENCY shall have each said individual sign a statement acknowledging receipt of the policy.
- (E) AGENCY agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the AGENCY under this Contract may, at the City's discretion, be withheld until the situation is resolved.
- (F) This Section 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, AGENCY 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.

- 18.2 Adversarial Proceedings. AGENCY agrees that under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City and City may conduct an audit under Section 6.4 to confirm no such use. “Adversarial Proceeding” means *any matter in which interests of each party or of each party’s client(s), are contrary to the other, including any matter in dispute, litigation, claim, demand, or other action taken in law or equity or based upon any other legal theory, seeking any remedy from the City.* AGENCY understands that the City may deem AGENCY ineligible for consideration to receive any future funding under this Contract or under another existing or future agreement while any adversarial proceedings against the City remains unresolved. This Contract may be terminated by City under Article XIII should AGENCY have a pending lawsuit against City or file a lawsuit against the City during the term of this Contract.
- 18.3 No Use of Funds for Religious Activities. AGENCY 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 benefit, directly or indirectly, any such sectarian or religious facility or activity, or for the construction, operations, maintenance or administration of any sectarian or religious facility or activity.
- 18.4 Contribution Prohibitions. AGENCY acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for an entity that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Consolidated Human Development Funding Services Pool Request for Proposal (RFP) is released, and ending on the 30<sup>th</sup> calendar day following the contract award. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response. AGENCY acknowledges that the City has identified this Contract as high profile. AGENCY warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract 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 Contract. Should the signer of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

## XIX. MISCELLANEOUS

- 19.1 Independent Contractor. AGENCY is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and the City shall in no way be responsible therefor, and neither Party has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 19.2 Nothing contained in this Contract shall be deemed or construed by the Parties 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.
- 19.3 Any and all of the employees of the AGENCY, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the AGENCY 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 AGENCY.
- 19.4 Non-Waiver. No waiver, change, modification or discharge by either Party of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Contract or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.
- 19.5 Venue. AGENCY and City agree that this Contract shall be governed by and construed in accordance with

the laws of the State of Texas, and all obligations of the Parties created under this Contract are performable in Bexar County, Texas. Any action or proceeding to adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

- 19.6 Gender. Words of any gender used in this Contract 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.
- 19.7 Severability. If any clause or provision of this Contract 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, it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained. It is also the intention of the Parties that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract 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.
- 19.8 Authority. The signer of this Contract for AGENCY represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of AGENCY and to bind AGENCY to all of its terms, conditions, provisions and obligations. AGENCY shall provide evidence to City upon execution of this Contract that it is currently operating as a Texas non-profit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in its application for funding. Whether a non-profit or for-profit entity, AGENCY 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. AGENCY shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

**[signature page follows]**

19.9 Entire Contract. This Contract and its attachments, if any, contain all of the terms and conditions agreed upon, constitute the entire and integrated Contract between the Parties, and supersede all prior negotiations, representations, or contracts, either oral or written.

This Contract has been executed effective as of the date of signature of the last Party to sign (the "Effective Date").

**CITY OF SAN ANTONIO:**

**AGENCY:**

**St. Vinnys Bistro**

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Melody Woosley, Director  
Department of Human Services

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Martin O'Connor  
Chief Executive Officer

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Date

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Date

**Address:**

Department of Human Services  
Attn: Director  
100 W. Houston Street, 9<sup>th</sup> Floor  
San Antonio, Texas 78205

**Address:**

One Haven for Hope Way  
San Antonio, Texas 78207

**APPROVED AS TO FORM:**

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Assistant City Attorney

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Board President (if required by Agency)

**ATTACHMENTS:**

**Attachment I – Project Schedule**

**Attachment II – Project Packages, consisting of the following for each Project:**

- (a) Scope of Work and Scorecard;
- (b) Budget; and
- (c) Supplemental Grant Contract and/or Terms and Conditions (if any).

**Attachment III – Funding Guide**

**Attachment IV – HIPAA Business Associate Agreement**

**Attachment I**  
**Project Schedule**

**St. Vinnys Bistro DUNS# 117536034**

<b>Project</b>	<b>General Fund or Grant Source</b>	<b>Federal Assistance Listing Number or CFDA#</b>	<b>Project Allocation</b>
<b>St Vinnys Bistro</b>	General Fund	N/A	\$148,950.00
<b>Total Contract</b>			<b>\$148,950.00</b>

**Attachment II**  
**Project Packages**

Project Packages	
<b>St. Vinnys Bistro</b>	<ul style="list-style-type: none"><li>• Scope of Work and Scorecard</li><li>• Budget</li><li>• Supplemental Grant Contract and/or Terms and Conditions (if any)</li></ul>