

## ATTACHMENT I.

|                 |   |                              |
|-----------------|---|------------------------------|
| STATE OF TEXAS  | § | FUNDING AGREEMENT BETWEEN    |
|                 | § | THE CITY OF SAN ANTONIO AND  |
| COUNTY OF BEXAR | § | NON-PROFIT ORGANIZATION NAME |

This Funding Agreement (this “**Agreement**”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as “**City**”), a Texas municipal corporation, acting by and through its Director of the Neighborhood & Housing Services Department (“**NHSD**”) and NON-PROFIT ORGANIZATION, a Texas nonprofit corporation, by and through their Executives (“**Grantee**”), both of which may be referred to herein collectively as the “Parties”.

**WHEREAS**, Grantee is an organization with a mission that \_\_\_\_\_.

**WHEREAS**, the City has determined that providing funding to support Grantee’s mission would assist low-income families with minimizing the costs to maintain their homes, thereby keeping housing affordable, which is consistent with the City’s Strategic Housing Implementation Plan.

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

### **I. TERM**

1.1 The term of this Agreement shall commence on DATE, which shall constitute the Effective Date, and shall terminate on DATE, unless earlier terminated under this Agreement. The term of this Agreement may be extended by mutual agreement of the Parties without action by the City Council.

1.2 If funding for the entire term of this Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement and the City’s termination of this Agreement under this Section shall not constitute breach of this Agreement.

### **II. GENERAL RESPONSIBILITIES OF GRANTEE**

2.1 Grantee agrees by the execution of this Agreement to comply with all provisions of this Agreement and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by City.

### **III. FUNDING**

3.1 City agrees to contribute to Grantee funding in the amount of no more than **AMOUNT 00/100 DOLLARS.** to support Grantee's home improvement and community revitalization program, hereafter "***Program***", and its performance of the Scope of Services set forth in Attachment "A", which is incorporated herein by reference in its entirety for all purposes.

3.2 Grantee agrees that no disbursement of funds, shall be made until the following documents are received from Grantee:

- (1) Execution of the Agreement by all Parties; and
- (2) Documentation of:
  - (1) Reimbursement request per home
  - (2) Name and address of homeowner
  - (3) Description of the work completed
  - (4) Invoice of the work completed
  - (5) Receipts of expenses as part of the reimbursement request, and
  - (6) Picture documentation of complete work.

3.3 Grantee will be reimbursed for eligible expenses to include no more than 10% of total award for administrative support unless adjusted by Director.

3.4 In no event will the total amount of funding for the Program by the City exceed the amount stated in Section 3.1.

3.5 Grantee acknowledges that the City's funding under this Agreement represents a portion of the total amount of funding Grantee intends to receive from other agencies and does not constitute the entire budget for Grantee's Program. The City is not responsible for paying all costs associated with or necessary to carry out Grantee's Program.

- 3.5.1 Grantee shall provide all necessary funding for the Program beyond the City's contribution. In the event the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly.
- 3.5.2 In no event shall City be liable for any expense of Grantee for the Program that is not eligible or allowable under this Agreement.
- 3.5.3 City shall not be obligated nor liable under this Agreement to any party, other than Grantee, for payment of any monies or provision of any goods or services.
- 3.6.4 Grantee understands that the funds provided pursuant to this Agreement are City funds and that Grantee will therefore comply with all rules, regulations, policies, and procedures applicable to these funds as directed by City.

3.7 Performance of Grantee's obligations under this Agreement shall be to the satisfaction of the Director of NHSD, hereafter "**Director**". The determination made by the Director shall be final, binding, and conclusive on all Parties hereto. In the event the Director finds the performance of Grantee unsatisfactory, Grantee shall return all funds contributed by the City under this Agreement. City shall have the right to terminate this Agreement, in whole or in part, should Grantee's performance not be satisfactory to Director.

3.7.1 City shall notify Grantee in writing of any decision to require the return of the funds. Should City elect to terminate this Agreement, it will do so by the provisions for Defaults with Opportunity for Cure contained in this Agreement.

3.8 Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of the investigation, or other criminal action, and to prevent fraud and program abuse.

3.8.1 Grantee shall allow City to review Grantee's system of internal administrative and accounting controls as City deems necessary to ensure financial responsibility and proper administration of City funds.

#### **IV. PERFORMANCE BY GRANTEE**

4.1 Grantee shall utilize up to **(amount provided)** by City for the funding of rehabilitation costs for a minim AMOUNT of (NUMBER) homes, with a maximum amount of \$XX,000.00 to be spent for each home, unless adjusted by Director. All homes rehabilitated under the Program must be located within the city limits of the City of San Antonio.

4.2 Grantee shall commence the Program within sixty (60) days of the Effective Date of this Agreement and complete the Program no later than **DATE**.

4.3 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement. Grantee shall not make any substantial changes to the Programming without the prior written approval of City.

4.4 Grantee shall submit monthly updates on the project scope, schedule, and status of the Program to City. City shall have authority to inspect the project throughout the Agreement term to ensure compliance with this Agreement and ensure proper usage of City funds as proscribed by the Scope of Services.

4.5 Grantee agrees that City may carry out reasonable monitoring and evaluation activities to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and with all other laws, regulations and ordinances related to the performance hereof.

4.6 Grantee agrees to abide by the City's Ethics Code and any amendments or revisions thereto. Grantee will establish safeguards to prohibit anyone whose position is funded or partially funded by this Agreement from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business, or other ties. City, may, at its option, terminate this Agreement for any violation of this Section.

4.7 Grantee's Program cannot cause permanent direct displacement of residents.

4.8 Grantee hereby acknowledges that it will administer the Program in a manner consistent with the City's goal and public purpose of improving housing opportunities for residents in San Antonio.

## **V. FISCAL MANAGEMENT**

5.1 It is mandatory that Grantee utilize an accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this Agreement.

5.2 Upon completion or termination of the Program as described in the Scope of Services, any unused funds, rebates, or credits must immediately be returned by Grantee to City.

5.3 Should any expense or charge that has been paid with funds from this Agreement be subsequently disapproved or disallowed because of any Program review or accounting audit, Grantee will immediately refund such amount to City. Grantee further authorizes City, if City so elects, to deduct such amount or charge as a claim against future payments, if any. The Director has the express authority to deduct such claims from subsequent payments.

## **VI. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

6.1 Grantee shall comply with all federal, state, and local laws, rules, and regulations in the rehabilitation or remodeling of all properties under this Agreement and will use all reasonable efforts to ensure compliance with the same by all contractors and subcontractors that may work or volunteer with the Program. In addition to the obligations set forth in Article XIII. Indemnification, Grantee agrees to assume all liability for failure to comply with any federal, state, or local law, rule or regulation governing the performance of the services under the Scope of Services. Failure to comply with this Section shall constitute cause to terminate this Agreement in accordance with Article VIII. Termination.

6.2 Non-Discrimination. As a party to this contract, Grantee 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 herein.

6.3 Grantee understands and agrees that Grantee is required to refund money, pursuant to 80(R) HB 1196, that Grantee has received from City through this Agreement, in the event of Grantee's conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

6.4 As a condition of entering into this Agreement, Grantee represents and warrants that it has complied with, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of City's SBEDA Ordinance No. 2016-05-19-0367. As part of such compliance, Grantee shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Grantee retaliate against any person for reporting instances of such discrimination. Grantee shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The Grantee understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Grantee shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to City contracts.

6.5 Grantee will complete and submit City's Ethics Disclosure Form prior to Grantee's receipt of any City funds.

## **VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

7.1 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

7.1.1 That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

7.1.2 That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

7.2 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "**records**") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the termination of this Agreement. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four-year period.

## **VIII. TERMINATION**

8.1 “Termination” of this Agreement shall mean upon the termination date set forth in Section 1.1 of this Agreement or upon a decision to terminate by either City or Grantee, written notice of such, and the effective date thereof, shall be immediately provided to the other party in accordance with Article XXIV. Notices.

8.2 Termination by Agreement. This Agreement may be terminated by mutual agreement of the Parties. In the event the Parties agree to a mutual termination, both parties shall be fully released from all obligations under the Agreement, **except** that if funds have been paid by the City to Grantee, in whole or in part, prior to the effective date of the mutual termination under this Article, Grantee shall refund City those funds in an amount that is proportionate to the percentage of work that has not been completed by Grantee under the Scope of Services as of the effective date of the mutual termination.

8.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XXIV. Notices, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

8.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XX. Assignments; or

8.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

8.4 Should Grantee default in its performance of any of the terms or conditions of this Agreement, City shall deliver to the Grantee written notice thereof specifying the matters of default. Grantee shall have ten (10) days after its receipt of the written notice to cure such default. If Grantee fails to cure the default within such ten (10) day period, City may elect to terminate this Agreement, in whole or in part, upon written notice, as of the date provided in the notice.

8.5 If City terminates the Agreement under this Article and the funds have already been paid to Grantee by City, if the Project has not been completed, Grantee shall refund the amount of funds paid to Grantee by City in an amount that is proportionate to the percentage of work that has not been completed by Grantee under the Scope of Services as of the date of the Notice of Termination issued by the City.

8.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

8.7 Regardless of how this Agreement is terminated, Grantee shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to

City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Grantee, or provided to Grantee, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Grantee in accordance with Article XI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Grantee's sole cost and expense. Payment of compensation due or to become due to Grantee is conditioned upon delivery of all such documents, if requested by City.

8.8 Upon the effective date of expiration or termination of this Agreement, Grantee shall cease all operations of work being performed by Grantee or any of its subcontractors pursuant to this Agreement. Nothing in this Article is intended to prohibit Grantee from completing the Project on its own without funding from the City after the effective date of the termination.

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

## **IX. ADVERSARIAL PROCEEDINGS**

9.1 In this Section "*Adversarial Proceeding*" shall mean any matter in which interests of the City and Grantee are not aligned or are otherwise contrary to one another. This includes any matter in dispute, litigation, claim, demand, or other action taken against the City in law or equity or based upon any other legal theory, seeking any remedy from the City.

9.2 The Parties agree that neither party shall threaten, initiate, or participate in any adversarial proceeding against the other, except for breach of contract of this Agreement, during the term of this Agreement. Should a dispute arise that is either related or unrelated to the terms of this Agreement between the Parties, the Parties agree to make a good faith effort to resolve the dispute through a meeting and/or mediation if mutually agreed, and to consider a mutual termination and release of this Agreement as provided in Section 8.2, prior to threatening, initiating, or participating in an adversarial proceeding against the other party. Failure of either party to comply with this Section shall constitute cause for termination under Section 8.3.

9.3 Grantee agrees that no monies paid to Grantee under this Agreement can be used to pay costs pertaining to or in any way fund an adversarial proceeding against the City.

9.4 Non-Appropriation. In the event that through action or no action initiated by the City of San Antonio, the City's legislative body does not appropriate funds for the continuation of this Agreement and has no funds to do so from other sources, this Agreement may be terminated. To effect this termination, the City shall, thirty (30) days prior to the period for which funds are not appropriated, send the Grantee written notice stating that the City of San Antonio failed to appropriate funds and that this Agreement is terminated.

## **X. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

10.1 Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City;
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder;
- (C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee; and
- (1) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

10.2 Grantee covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of City; that Grantee shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractor, and consultants; that the doctrine of respondent superior shall not apply as between City and Grantee, its officers, agents, employees, contractors, subcontractors, and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Grantee. Furthermore, Grantee acknowledges and agrees that while the City expects Grantee to procure contractors that will perform their work in a good and workmanlike manner, City in no way warrants the contractors' workmanship or qualifications to perform the work under this Agreement. Grantee expressly understands and agrees that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Grantee under this Agreement and that the Grantee has no authority to bind or attribute liability for any injuries or damages to the City for any work or services performed pursuant to this Agreement.

## **XI. RECORDS RETENTION**

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



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

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

## **XII.INSURANCE**

12.1 No later than thirty (30) days after the Effective Date, Grantee must provide a completed Certificate(s) of Insurance to City’s NHSD. 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); and properly endorsed and have the agent’s signature, and phone number.

12.2 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 Agreement until such certificate and endorsements have been received and approved by City’s NHSD. No officer or employee, other than City’s Risk Manager, shall have authority to waive this requirement.

12.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

12.4 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 Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

12.5 Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee’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. If Grantee claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

| <i><b>INSURANCE TYPE</b></i>  | <i><b>LIMITS</b></i>   |
|---|--|
| *1. Workers' Compensation<br>*2. Employers' Liability   | Statutory<br>\$500,000/\$500,000/\$500,000   |
| 3. Commercial General Liability Insurance to include coverage for the following:<br>a. Premises/Operations<br>b. Products/Completed Operations<br>c. Personal/Advertising Injury<br>d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability<br>e. Explosion, Collapse, Underground Property Hazard Liability<br>*f. Damage to property rented by you<br>g. Independent Contractors | For Bodily Injury and Property Damage<br>\$500,000 per occurrence;<br>\$1,000,000 general aggregate<br><br>*f. \$200,000 |
| 4. Business Automobile Liability<br>a. Owned/leased vehicles<br>b. Non-owned vehicles<br>c. Hired Vehicles  | Combined Single Limit for Bodily Injury and Property Damage of \$500,000 per occurrence.                                 |
| *If Applicable  |  |

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

12.7 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. Grantee 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  
Attn: Neighborhood & Housing Service Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

12.8 Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- (1) 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;
- (2) 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;
- (3) Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability, and auto liability policies in favor of City; and
- (4) 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.

12.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

12.10 In addition to any other remedies City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

12.11 Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

12.12 Grantee'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 Agreement.

12.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

12.14 Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

### **XIII. INDEMNIFICATION**

13.1 **GRANTEE 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 GRANTEE's activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, contractor or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

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

13.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Grantee, 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 Grantee or any subcontractor under worker's compensation or other employee benefit acts.

#### **XIV. CONFLICT OF INTEREST**

14.1 Grantee 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 Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.2 Grantee 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.

14.3 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

#### **XV. POLITICAL ACTIVITY**

15.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, 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.

#### **XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

16.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence, and related material submitted by Grantee, shall, upon receipt, become the property of City.

#### **XVII. CONTRACTING**

17.1 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local,

state, and federal permits and approvals required for the activities under this Agreement are obtained.

17.2 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

17.3 Grantee agrees that it will be liable to the City for any misconduct, including but not limited to any conduct involving dishonesty, theft, fraud, or other conduct of moral turpitude that is injurious to the City's financial integrity and/or reputation, or that causes damage to the City of any nature whatsoever, which City may recover under any remedy of law or equity.

### **XVIII. CHANGES AND AMENDMENTS**

18.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by the amendment in writing executed by both City's designee and Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.2 It is understood and agreed by the Parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation, or law.

### **XIX. INCORPORATION OF ATTACHMENTS**

19.1 Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

- Attachment "A": Scope of Services
- Attachment "B": Proposed Program Budget

### **XX. ASSIGNMENTS**

20.1 Grantee shall not transfer, pledge, or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

### **XXI. SEVERABILITY OF PROVISIONS**

21.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter,

City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XXII. NON-WAIVER OF PERFORMANCE**

22.1 No waiver by either Party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

22.2 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

22.3 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

## **XXIII. ENTIRE AGREEMENT**

23.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

## **XXIV. NOTICES**

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

CITY:  
Neighborhood & Housing Services Department  
Attn: Director  
City of San Antonio  
P.O. Box 839966

San Antonio, Texas 78283-3966

**GRANTEE:**

Non-profit organization name

Address

Attn: XXXX

24.2 Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

**XXV. PARTIES BOUND**

25.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided herein.

**XXVI. RELATIONSHIP OF PARTIES**

26.1 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

**XXVII. TEXAS LAW TO APPLY**

27.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

**XXVIII. GENDER**

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

**XXIX. CAPTIONS**

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

**XXX. LEGAL AUTHORITY**

30.1 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.



30.2 The signer of this Agreement for Grantee represents, warrants, assures, and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

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

**CITY OF SAN ANTONIO,**  
a Texas municipal corporation

**Non-profit organization name,**  
a Texas nonprofit corporation

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jameene Williams  
Assistant City Attorney

**ATTACHMENT "A"**  
**SCOPE OF SERVICES**

**ATTACHMENT "B"**  
**PROPOSED PROGRAM BUDGET**

