

**AGREEMENT FOR
THE URBAN FARMING PILOT PROGRAM
BETWEEN
THE CITY OF SAN ANTONIO AND
THE FOOD POLICY COUNCIL OF SAN ANTONIO, INC.**

This Agreement (Agreement) is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its City Manager or designee, and the Food Policy Council of San Antonio, Inc. ("FPCSA"), hereinafter collectively referred to singularly or collectively as "Party" or "Parties."

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.

WHEREAS, the Food Policy Council of San Antonio, Inc. (FPCSA) is a 501c3 organization dedicated to addressing root causes of an unhealthy food system and helping people work for the food environment they want to have; and

WHEREAS, the City seeks for FPCSA to implement the "Urban Farming Pilot Program" (Project); and

WHEREAS, through this Project, FPCSA will provide funding in the form of capacity-building grants to at least three Urban Farms (new or established) to initiate or expand efforts of farmers located within the City of San Antonio; and

WHEREAS, urban farming has been connected to an increase in access to affordable, fresh and nutritious food, improving urban cooling, strengthening the food system, the promotion of healthy living, and fostering connectedness within a community; and

WHEREAS, it can also help people raise awareness about nutritious eating and conscious lifestyles; and

WHEREAS, this Project is aligned with the San Antonio Metropolitan Health District's (Metro Health) vision to have "Healthy people thriving in healthy communities" by strengthening the food system to help address food insecurity and access, and promoting overall wellness; and

WHEREAS, FPCSA hereby accepts the funding offered by the City as well as the responsibilities and duties necessary to initiate the implementation of and management of the Project; **NOW THEREFORE:**

For and in consideration of the following mutual promises and obligations, and for the benefit of the residents of the City of San Antonio, the Parties herein agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“FPCSA” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of the San Antonio Metropolitan Health District.

“Urban Farm” shall be defined consistent with the San Antonio Unified Development Code as a tract of land within city limits, not at one's own residence, on which produce is raised and sold on site or elsewhere. This can include farming and/or greenhouses and/or hoopouses on vacant lots or acreage. Composting of vegetative materials produced on the farm or elsewhere is allowed, as long as it is covered by dry material to prevent nuisance conditions. A farmstand or market may be located on the site. In addition to holding a market, an urban farm may host educational events and/or serve as an event venue, provided that sufficient off-street parking is provided.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon execution and terminate on September 30, 2025.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 FPCSA agrees to provide the services below in exchange for the compensation described in Article IV. Funding to FPCSA. The “Services” are as follows:

3.1.1 FPCSA shall create a detailed work plan for the development of the Project within 90 days of contract execution. The work plan shall outline how FPCSA will execute the deliverables outlined in the scope of services and administer the Project. The work plan at minimum should include, but is not limited to, the following:

- i. A copy of the grant solicitation application with a description of the qualifications, timelines, allowable costs, scoring rubric, monitoring and contingency plan if a selected Urban Farm(s) becomes non-compliant with the scope of work requirements.
- ii. A marketing plan to promote the Project funding opportunity.
- iii. A listing of members who will serve on the FPCSA's ad hoc committee (Committee) for the Project to facilitate a competitive review process for the

issuance of capacity building grants to Urban Farms within the City. The Committee shall include at least one (1) representative from Metro Health.

3.1.2 By December 5, 2024, the Committee shall create and submit the work plan referenced above. Upon completion of the work plan, FPCSA shall also submit a progress report which is inclusive of the detailed work plan and includes the funding application document, the scoring criteria/rubric for the application review, a list of the Committee members with voting privilege, monitoring plans, and marketing plan for the funding opportunity. This report shall be due on December 5, 2024.

3.1.3 On January 5, 2025, FPCSA shall open the open solicitation process to Urban Farms within the City to provide capacity-building grants. A rolling application process is permitted as long as funding allows and with all awards funded by May 31, 2025.

3.1.4 By April 15, 2025, FPCSA shall have made selections from the first round of proposals (if conducting a rolling solicitation), in coordination with voting members of the Committee.

3.1.5 FPCSA shall provide four progress reports to Metro Health detailing the progress of the Project. The due dates of the progress reports shall be December 5, 2024, April 30, 2025, June 5, 2025, and September 5, 2025 as set out below:

- i. The first progress report referenced in section 3.1.2 above is due on December 5, 2024 and shall include a copy of the grant solicitation application with a description of the qualifications, timelines, allowable costs, scoring rubric, monitoring and contingency plan if a selected Urban Farm(s) becomes non-compliant with the scope of work requirements.
- ii. The second progress report due on April 30, 2025 shall include copies of the agendas and sign in sheets from the Committee meetings, the completed scoring sheets for the applications, the selected Urban Farm recipients along with their application documents, and the location of the Urban Farm projects.
- iii. The third progress report due on June 5, 2025, shall include agendas/sign in sheets from Committee meetings, and monitoring documents which include dates of site visits/meetings and a summary of progress for each Urban Farm grant recipient.
- iv. The final progress report due on September 5, 2025, shall include the cumulative number of grants disseminated, the dates of the monitoring site visits to the Urban Farms, progress on execution of the Urban Farms' proposals, success stories from the Urban Farms, lessons learned from FPCSA, its Committee or the Urban Farms and any findings of unused, misused or returned funds.

3.1.6 Minimum requirements for Project proposals and selection process:

- i. Only Urban Farms as defined in this Agreement may submit proposals for the Project.

ii. Urban farms located near low-income neighborhoods, according to the City of San Antonio Equity Index, will be given priority.

iii. Funds awarded, must support new or established Urban Farms, help create new Urban Farms, or expand, enhance, and sustain current Urban Farms. Acceptable uses of funds may include farming materials and supplies, small business development, enhancement projects, community reinvestment, and other costs related to urban farming. (Examples of community reinvestment include hosting free educational events for youth and families, providing free or reduced cost produce to surrounding community, offering workforce training opportunities, or serving as an event venue for public classes or events).

iv. Urban Farms applying should exhibit sufficient agriculture experience to successfully launch and operate an Urban Farm.

v. Project proposals should include: (1) a detailed description of the request and Urban Farm's intended use of funds (2) benefits to City of San Antonio residents (3) implementation timelines (if applicable) and (4) any other relevant information.

3.1.7 FPCSA shall administer, manage and monitor the funding awarded to Urban Farms as follows:

i. FPCSA shall re-grant \$54,000.00 to support new or established Urban Farms to help create new Urban Farms, expand, enhance, and sustain current Urban Farms within the City.

ii. FPCSA shall award a minimum of three (3) grants splitting the \$54,000.00 according to the Project budgets submitted in the application process.

iii. FPCSA in coordination with its committee shall select Urban Farms to be awarded by April 15, 2025, with all awards funded by May 31, 2025.

iv. FPCSA shall engage grantee Urban Farms to ensure that the funds are being used for the projects outlined in the applications submitted by the Urban Farms and shall conduct at least two site visits to the Urban Farms and address discrepancies.

v. Monitoring shall include observation of the plan outlined in the application through the site visits and documenting progress and completion of the plans.

vi. In the event that there is a surplus of grant funding at the end of the contract term due to FPCSA being unable to provide all the funding to Urban Farms or the Urban Farms do not use all of the funds, the Urban Farms shall return the funds to FPCSA and FPCSA shall return the funds in FPCSA's possession to Metro Health within thirty days from the date the funds are requested by Metro Health.

3.2 All work performed by FPCSA hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by FPCSA, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should FPCSA's work not be satisfactory to Director; however, City shall have no obligation to terminate and may

withhold any and all payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. FUNDING TO FPCSA

4.1 In consideration of FPCSA's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth in this Agreement, City agrees to pay FPCSA SIXTY THOUSAND DOLLARS AND 00/100 CENTS (\$60,000.00) as total compensation, to be paid as follows:

- a. \$54,000.00 shall be awarded and provided to Urban Farms consistent with the terms of this Agreement.
- b. \$6,000.00 shall be paid to FPCSA for administration of the Project.

FPCSA shall submit invoices consistent with the following:

- a. Upon submission of the first progress report due on December 5, 2024 FPCSA shall submit an invoice for up to \$30,000.00 (up to \$27,000.00 to be provided to Urban Farms and \$3,000.00 to be paid to FPCSA).
- b. Upon submission of the second progress report due April 30, 2025 FPCSA shall submit an invoice for up to \$29,000.00 (up to \$27,000.00 to be provided to Urban Farms and \$2,000.00 to be paid to FPCSA).
- c. Upon submission of the final progress report due on September 5, 2025 FPCSA shall submit an invoice for \$1,000.00 to be paid to FPCSA.

4.2 FPCSA shall invoice as set out above and City shall reimburse FPCSA upon receipt and approval of an invoice. Invoices shall include all supporting documentation as required by City.

4.3 City shall not be obligated or liable under this Agreement to any party, other than FPCSA, for payment of any monies or provision of any goods or services.

4.4 No additional fees or expenses of FPCSA shall be charged by FPCSA nor be payable by City. The parties hereby agree that all compensable expenses of FPCSA have been provided for in the total payment to FPCSA as specified in section 4.1 above. Total payments to FPCSA cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance, therefore.

V. OWNERSHIP OF DOCUMENTS

5.1 FPCSA shall deliver, at FPCSA's sole cost and expense, all Agreement-related documents and reports to the City in accordance with the dates established under this Agreement in a timely and expeditious manner.

5.2 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, an any responses, inquiries, correspondence and related material submitted by FPCSA shall, upon receipt, become property of the City.

VI. RECORDS RETENTION

6.1 FPCSA 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.

6.2 FPCSA 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, FPCSA shall retain the records until the resolution of such litigation or other such questions. FPCSA acknowledges and agrees that City shall have reasonable access to any and all such documents at reasonable times, as deemed necessary by City, during said retention period. City may, at its election, require FPCSA to return said documents to City prior to or at the conclusion of said retention.

6.3 FPCSA shall notify City, immediately, in the event FPCSA receives any requests for information from a third party, which pertain to the documentation and records referenced herein. FPCSA understands and agrees that City will process and handle all such requests, and City acknowledges that FPCSA, as a public entity, must separately determine whether FPCSA must respond as well.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon thirty (30) calendar days written notice, which notice shall be provided in accordance with the provisions of this Agreement.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, 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:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

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

7.4 Defaults With Opportunity for Cure. Should FPCSA default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. FPCSA shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If FPCSA fails to cure the default within such thirty-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate and City may seek to recapture from FPCSA any and all funds disbursed under this Agreement subject to any right of offset FPCSA may have for services performed in accordance with Article III. above.

7.4.1 Reserved

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required; or

7.4.4 Performing unsatisfactorily.

7.5 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.

7.6 Upon the effective date of expiration or termination of this Agreement, FPCSA shall cease all operations of work being performed by FPCSA or any of its subcontractors pursuant to this Agreement.

7.7 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 FPCSA for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and

deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Director
San Antonio Metropolitan Health District
100 W. Houston, 14th Floor
San Antonio, TX 78205

If intended for FPCSA, to:

FPCSA
Attn: Jamie Gonzalez, President
503 Chestnut St
San Antonio, TX 78202

IX. INSURANCE

FPCSA agrees to accept responsibility for damages to their property and any claims that arises during the duration of the contact. FPCSA shall obtain their own insurance coverage to protect their property and in the event of a claim. FPCSA agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

X. INDEMNIFICATION

11.1 FPCSA 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 FPCSA'S activities under this Agreement, including any acts or omissions of FPCSA, any agent, officer, director, representative, employee, consultant or subcontractor of FPCSA, 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 FPCSA 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.

11.2 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. FPCSA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or FPCSA known to FPCSA related to or arising out of FPCSA's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at FPCSA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving FPCSA of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by FPCSA in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. FPCSA 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 FPCSA fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and FPCSA 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.

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

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 FPCSA shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of FPCSA. FPCSA, its employees or its subcontractors shall perform all necessary work.

11.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of FPCSA. City shall in no event be obligated to any third party, including any subcontractor of FPCSA, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

11.3 Except as otherwise stated herein, FPCSA may not sell, assign, pledge, transfer

or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, FPCSA shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor FPCSA, assignee, transferee or subcontractor.

11.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should FPCSA assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of FPCSA shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by FPCSA shall in no event release FPCSA from any obligation under the terms of this Agreement, nor shall it relieve or release FPCSA from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

FPCSA covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that FPCSA 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, subcontractors and consultants; that the doctrine of *respondent superior* shall not apply as between City and FPCSA, 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 venturers between City and FPCSA. The parties hereto understand and agree 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 FPCSA under this Agreement and that the FPCSA has no authority to bind the City.

XIII. NON-DISCRIMINATION

As a party to this Agreement, the FPCSA 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. Also, the FPCSA certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:

- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
- b. Section 504 of the Rehabilitation Act of 1973, as amended;
- c. The Age Discrimination Act of 1975, as amended;
- d. Fair Labor Standards Act of 1938, as amended;
- e. Equal Pay Act of 1963, P.L. 88-38;
- f. Title IX of the Education Amendments of 1972, as amended; and
- g. All applicable regulations implementing the foregoing laws.

XIV. CONFLICT OF INTEREST

14.1 FPCSA acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has 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 City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, FPCSA warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. FPCSA further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and FPCSA. The Director may execute contract amendments on behalf of the City without further action by the San Antonio City Council, in the following circumstances: (A) an increase in contract funding in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this contract or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing funding and executed without City Council approval pursuant to this subsection during the term of this contract shall not exceed the foregoing amount; (B) no cost extensions up to two years; and (C) modifications to the Scope of Work 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.

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

XVI. SEVERABILITY

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.

XVII. LICENSES/CERTIFICATIONS

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

XVIII. COMPLIANCE

FPCSA shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement 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 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. In case of City, such changes must be approved by the City Council, as described in Article XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

20.1 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.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXI. LEGAL AUTHORITY

The signer of this Agreement for FPCSA represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of FPCSA and to bind FPCSA to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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.

XXIV. INCORPORATION OF EXHIBITS

Each of the Exhibits 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:
None

XXV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the

governmental entity.

"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 that exists to make a profit. This term does not include a sole proprietorship.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVI. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees;
and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds
of the governmental entity.

"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 that exists to make a profit. This term does not include a sole proprietorship.

"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).

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXXVII. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"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 that exists to make a profit. This term 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.

Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. FPCSA hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on FPCSA's certification. If found to be false, or if FPCSA is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXIX. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain 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 hereto, and duly executed by the parties, in accordance with Article XV. Amendments.

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

CITY OF SAN ANTONIO

FOOD POLICY COUNCIL OF SAN ANTONIO, INC.

Claude A. Jacob, DrPH, MPH
Health Director
San Antonio Metropolitan Health District

Date: _____

Jamie Gonzalez
President

Date: 9/1/24

Approved as to Form:

City Attorney