

<b>STATE OF TEXAS</b>	<b>§</b>	<b>PROFESSIONAL SERVICES AGREEMENT</b>
	<b>§</b>	<b>FOR THE PROVISION OF SERVICES IN</b>
	<b>§</b>	<b>SUPPORT OF CITY OF SAN ANTONIO'S</b>
<b>COUNTY OF BEXAR</b>	<b>§</b>	<b>RIGHT TO COUNSEL PROGRAM</b>

This Professional Services Agreement ("Agreement") is entered into between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as ("City") acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, passed and approved on the 21<sup>st</sup> day of November, 2024, and Texas Rio Grande Legal Aid, Inc. ("TRLA"), a Texas Non-Profit corporation, (hereinafter referred to as "SERVICE PROVIDER"), by and through its Executive Director, both of which may be referred to herein collectively as the "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.

**I. DEFINITIONS**

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

- 1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 "Director" shall mean the Director of City's Department of Neighborhood and Housing Services.
- 1.3 "SERVICE PROVIDER" is defined in the preamble of this Agreement and includes its successors.
- 1.4 "Project" shall mean the general scope of services of this Agreement.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2024 and terminate on September 30, 2025 unless earlier termination shall occur pursuant to any provision hereof. This Agreement may be renewed for five additional one-year terms upon agreement by the Parties without further action of the San Antonio City Council.

2.2 Notwithstanding any other provisions of the Agreement, and to satisfy the requirements of the Constitution of the State of Texas, all covenants and commitments of City contained herein which would require the expenditure of funds by City are subject to and contingent upon the annual appropriation process. In the event City fails to appropriate sufficient funds dedicated to funding

any such obligation of City, such a failure shall not be considered a default or breach hereunder and SERVICE PROVIDER's sole remedy for such failure shall be to terminate the Agreement.

### **III. SCOPE OF WORK**

3.1 The Scope of Work ("Services") is attached hereto and incorporated as if thoroughly laid out for all intents and purposes as **Exhibit A**.

3.2 SERVICE PROVIDER agrees to provide the services and expend the funds to implement the Services, in exchange for the compensation described in Article IV., entitled "Compensation," below.

3.3 All work performed by SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

### **IV. COMPENSATION TO SERVICE PROVIDER**

4.1 In consideration of SERVICE PROVIDER's performance in a satisfactory and efficient manner, as determined solely by Director, of Services, City agrees to pay SERVICE PROVIDER an amount not to exceed ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$100,000.00) for the purpose of undertaking and completing the Services. If the Agreement is renewed as provided in section 2.1, the Parties agree that additional compensation will be paid to the SERVICE PROVIDER as budgeted and allocated by the San Antonio City Council for each applicable fiscal year.

4.2 Failure of the City Council to include the funds specified in this Article IV in future budgets of the City Council shall not constitute a breach of this Agreement. No additional fees or expenses of SERVICE PROVIDER shall be charged by SERVICE PROVIDER nor be payable by City except as provided in this Article. The parties hereby agree that all compensable expenses of SERVICE PROVIDER have been provided for in the total payment to SERVICE PROVIDER as specified in section 4.1. Total payments to SERVICE PROVIDER cannot exceed that amount set forth in this section 4.1 without prior approval and agreement of all parties, evidenced in writing, and approved by the San Antonio City Council, if required.

4.3 Beginning thirty (30) days after the effective date of this Agreement, SERVICE PROVIDER shall submit monthly invoices along with monthly reports reflecting outcomes required in the Scope of Work attached as Attachment II. Each invoice requesting reimbursement shall be based on the budget attached hereto to the Scope of Work. Reimbursements by City will be paid for services actually rendered to City based on the completion of the Services. City reserves the right to remit payment only after the completion of all deliverables as set forth in the Scope of Work have been met to the satisfaction of the

Director or his/her designee. Invoices shall be submitted in a form acceptable to City, which City shall pay within 15 days of receipt and approval by Director or his/her designee. Invoices shall be submitted to: City of San Antonio, Neighborhood and Housing Services Department, P.O. Box 839966, San Antonio, Texas 78283- 3966.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to SERVICE PROVIDER following approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party other than SERVICE PROVIDER for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 All writings, documents or information in whatsoever form and character produced by SERVICE PROVIDER pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by SERVICE PROVIDER.

5.2 SERVICE PROVIDER understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VI. RECORDS RETENTION**

6.1 SERVICE PROVIDER 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 SERVICE PROVIDER 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, SERVICE PROVIDER shall retain the records until the resolution of such litigation or other such questions. SERVICE PROVIDER 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 SERVICE PROVIDER to return said documents to City prior to or at the conclusion of said retention.

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

## VII. TERMINATION

7.1 “Termination” of this Agreement shall mean upon the termination date set forth in section 2.1 of this Agreement or upon a decision to terminate by either CITY or SERVICE PROVIDER. Written notice of termination, and the effective date thereof, shall be immediately provided to the other party in accordance with Article VIII of this Agreement.

7.2 **Termination Without Cause.** This Agreement may be terminated by City without cause upon 30 calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 **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 SERVICE PROVIDER, in whole or in part, prior to the effective date of the mutual termination under this section, SERVICE PROVIDER shall refund City those Funds in an amount that is proportionate to the percentage of work that has not been completed by the SERVICE PROVIDER under the Scope of Work as of the effective date of the mutual termination.

7.4 **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:

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

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

7.4.3 Violation of **Article IX. Adversarial Matters.** If City terminates the Agreement under Article IX and the Funds have already been paid to the SERVICE PROVIDER by the City, if all deliverables under the Scope of Work have not been completed, SERVICE PROVIDER shall refund the amount of Funds paid to the SERVICE PROVIDER by the City in an amount that is proportionate to the percentage of work that has not been completed by the SERVICE PROVIDER as of the date of Notice of Termination issued by the City.

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 Defaults With Opportunity for Cure. Should SERVICE PROVIDER default in the performance of this Agreement in a manner stated in this section 7.6, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. SERVICE PROVIDER shall have fifteen (30) calendar days after receipt of the written

notice, in accordance with Article VIII., Notice, to cure such default. If SERVICE PROVIDER fails to cure the default within such fifteen (30) 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 to contract with another entity to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new entity against SERVICE PROVIDER's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.6.1. Bankruptcy or selling substantially all of company's assets.
- 7.6.2. Failing to perform or failing to comply with any covenant herein required.
- 7.6.3. Performing unsatisfactorily as determined by the Director.

7.7 With the exception of any attorney-client privileged or confidential documents or information, regardless of how this Agreement is terminated, SERVICE PROVIDER 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 SERVICE PROVIDER, or provided to SERVICE PROVIDER, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SERVICE PROVIDER in accordance with Article VI. RECORDS RETENTION. Any record transfer shall be completed within forty five (45) calendar days of a written request by City and shall be completed at SERVICE PROVIDER's sole cost and expense. Payment of compensation due or to become due to SERVICE PROVIDER is conditioned upon delivery of all such documents, if requested by City.

7.8 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SERVICE PROVIDER shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by SERVICE PROVIDER to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a waiver by SERVICE PROVIDER of any and all right or claims to collect moneys that SERVICE PROVIDER may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.10 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 SERVICE PROVIDER for any default hereunder or other action.

## **VIII. NOTICE**

8.1 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  
Department of Neighborhood and Housing Services  
P.O. Box 839966  
San Antonio, TX 78283

If intended for SERVICE PROVIDER, to:

Texas RioGrande Legal Aid, Inc.  
Attn: Executive Director  
1111 N. Main Ave.  
San Antonio, TX 78212

## **IX. ADVERSARIAL PROCEEDINGS**

9.1 In this Section “Adversarial Matter” means a matter in which the interests of the City and SERVICE PROVIDER as legal counsel representing a client are not aligned or are otherwise contrary to one another. This includes any matter in which SERVICE PROVIDER is acting as counsel for an individual(s) or entity in a dispute, litigation, claim, demand, or other action against the City in law or equity or based upon any other legal theory, seeking any remedy from the City.

9.2 In this Section “Contract Dispute” means a dispute, litigation, claim, demand or other action by City or SERVICE PROVIDER against the other with respect to the terms and obligations under this Agreement.

9.3 The following dispute resolution process shall apply to both Adversarial Matters and Contract Disputes:

a. The Parties shall keep an open line of communications and keep each other informed of matters that may or have lead to an Adversarial Matter or a Contract Dispute. The Parties shall reasonably share information and documents to facilitate resolution of Contract Disputes or Adversarial Matters.

b. The SERVICE PROVIDER shall not threaten, initiate, or participate in litigation in the capacity as a party against the City except for breach of contract of this Agreement during the term of this Agreement.

c. The Parties shall make a good faith effort to resolve the dispute through discussion or meeting(s) at a mutually agreed date, time, and location. If the Parties are unable to resolve the Contract Dispute or Adversarial Matter, then the Parties shall schedule a meeting of the Executive Director of TRLA or his designee and the San Antonio City Attorney or First Assistant City attorney to attempt to amicably resolve the Contract Dispute or the Adversarial Matter.

d. With respect to Adversarial Matters, both Parties acknowledge that the City and the SERVICE PROVIDER are represented by counsel. All communications related to an Adversarial Matter must be coordinated through the City Attorney's Office designee and the SERVICE PROVIDER's assigned counsel.

e. If the Parties are unable to resolve a Contract Dispute through a meeting with the SERVICE PROVIDER and the City Attorney or the First Assistant City Attorney then the Parties shall schedule a meeting with the City Manager or a designee and a leadership representative from SERVICE PROVIDER. If the dispute is not resolved as a result of that meeting, then either Party may initiate formal remedies under the Contract or through the legal proceedings.

f. Systemic failure to adhere to Section 9.3 of this Agreement, and if TRLA proceeds with a proceeding pertaining to an adversarial matter against the city, that act will constitute cause for termination by the City under Section 7.4.3 of this Agreement.

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

## **X. INSURANCE**

10.1 Prior to the commencement of any work under this Agreement, SERVICE PROVIDER shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Neighborhood and Housing Services which shall be clearly labeled "Right to Counsel Administrative Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Neighborhood and Housing Services. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 SERVICE PROVIDER's financial integrity is of interest to the City; therefore, subject to SERVICE PROVIDER's right to maintain reasonable deductibles in such amounts as are approved by the City, SERVICE PROVIDER shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SERVICE PROVIDER's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal/Advertising Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims Made)	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.  To be maintained and in effect for no less than two years subsequent to the completion of the professional services



10.4 SERVICE PROVIDER agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of SERVICE PROVIDER herein, and provide a certificate of insurance and endorsement that names the SERVICE PROVIDER and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of SERVICE PROVIDER. SERVICE PROVIDER shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Agreement for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. SERVICE PROVIDER shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within ten (10) days. SERVICE PROVIDER shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Department of Neighborhood and Housing Services  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SERVICE PROVIDER shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend SERVICE PROVIDER'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.

10.8 In addition to any other remedies the City may have upon SERVICE PROVIDER's failure to provide and maintain any insurance or policy endorsements to the extent and within

the time herein required, the City shall have the right to order SERVICE PROVIDER to stop work hereunder, and/or withhold any payment(s) which become due to SERVICE PROVIDER hereunder until SERVICE PROVIDER demonstrates compliance with the requirements hereof.

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

10.10 It is agreed that SERVICE PROVIDER's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.12 SERVICE PROVIDER and any subcontractors are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

**11.1 SERVICE PROVIDER covenants and agrees to FULLY INDEMNIFY and HOLD HARM-LESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or 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 SERVICE PROVIDER's activities under this AGREEMENT, including any acts or omissions of SERVICE PROVIDER, any agent, officer, director, representative, employee, Service Provider, volunteer or subcontractor of SERVICE PROVIDER, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or 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 SERVICE PROVIDER 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. SERVICE PROVIDER shall advise the CITY in writing within 24 hours of any claim or demand

against the CITY or SERVICE PROVIDER known to SERVICE PROVIDER related to or arising out of SERVICE PROVIDER's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at SERVICE PROVIDER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SERVICE PROVIDER 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 SERVICE PROVIDER in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. SERVICE PROVIDER 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 SERVICE PROVIDER fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and SERVICE PROVIDER 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. Nothing in this clause shall apply to retention of counsel by SERVICE PROVIDER's insurance provider who shall retain the right to select defense counsel on SERVICE PROVIDER's behalf pursuant to any contract between SERVICE PROVIDER and said insurance provider.

11.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of SERVICE PROVIDER or other person acting under the direction of SERVICE PROVIDER, 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 SERVICE PROVIDER or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 SERVICE PROVIDER 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 SERVICE PROVIDER. SERVICE PROVIDER, its employees or its subcontractors shall perform all necessary work. If SERVICE PROVIDER retains any employees or subcontractors, SERVICE PROVIDER shall notify the City within ten (10) days of retention in writing.

12.2 It is the City's understanding and this Agreement is made in reliance thereon that SERVICE PROVIDER intends to use no subcontractors in the performance of this Agreement. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director prior to the provision of any services by said subcontractor.

12.3 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 SERVICE PROVIDER. City

shall in no event be obligated to any third party, including any subcontractor of SERVICE PROVIDER, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or sub-contractor, indicate only such an entity as has been approved by Director.

12.4 Except as otherwise stated herein, SERVICE PROVIDER 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 Director. As a condition of such consent, if such consent is granted, SERVICE PROVIDER shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SERVICE PROVIDER, assignee, transferee or subcontractor.

12.5 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 SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER shall in no event release SERVICE PROVIDER from any obligation under the terms of this Agreement, nor shall it relieve or release SERVICE PROVIDER from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

13.1 SERVICE PROVIDER covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that SERVICE PROVIDER 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 SERVICE PROVIDERS; that the doctrine of respondeat superior shall not apply as between City and SERVICE PROVIDER, its officers, agents, employees, contractors, subcontractors and SERVICE PROVIDERS, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and SERVICE PROVIDER. 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 SERVICE PROVIDER under this Agreement and that SERVICE PROVIDER has no authority to bind the City.

### **XIV. RESERVED**

### **XV. CONFLICT OF INTEREST**

15.1 SERVICE PROVIDER 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.

15.2 Pursuant to the subsection above, SERVICE PROVIDER 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. SERVICE PROVIDER further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVI. AMENDMENTS**

16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be perfected by amendment, in writing, executed by both City and SERVICE PROVIDER. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

## **XVII. SEVERABILITY**

17.1 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.

## **XVIII. LEGAL SERVICES REQUIREMENTS**

18.1 All attorneys in the employ of, or selected by, SERVICE PROVIDER assigned to perform services under this Agreement shall be (i) licensed to practice law, (ii) members in good standing of the Bar of the jurisdiction in which all relevant proceedings are conducted, and (iii) if necessary, shall be admitted to practice before the relevant judicial or administrative body. All work performed by associates or paralegals shall be appropriately supervised under the direction of a qualified senior member of the Provider. SERVICE PROVIDER shall seek assurances from attorneys or firms assigned to perform the work for which this Agreement is given that they comply with the terms of this Article VII, and any other applicable provisions of the Agreement.

18.2 SERVICE PROVIDER warrants and certifies that SERVICE PROVIDER and any other

person assigned by it to provide services hereunder has the requisite training, license and/or certification to provide said services and that SERVICE PROVIDER meets all competency standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

18.3 At all times during the term of this Agreement, SERVICE PROVIDER agrees that SERVICE PROVIDER's own attorneys or those selected by SERVICE PROVIDER to provide services hereunder, whether under contract or volunteering, and whether compensated or offering such services pro bono, shall abide by rules and standards of professional conduct and responsibility as promulgated by the Texas State Bar, the Texas Supreme Court and any applicable case law and court rules that define the duties of counsel to their clients in the performance of the duties under this Agreement.

18.4 In the event of any conflict of interest, inability to perform the contract services, or inability to practice law, the SERVICE PROVIDER shall promptly notify the City in writing of such change of status.

18.5 Attorneys and staff employed by the SERVICE PROVIDER shall not solicit or accept any compensation, gifts, gratuities or services from any client.

18.6 If a complaint or any other disciplinary action results in a reprimand, suspension, or disbarment, or other disciplinary action taken by the Texas State Bar against any attorneys employed by, or selected by, SERVICE PROVIDER, this Agreement is subject to immediate termination by the City, notwithstanding any provision to the contrary in this Agreement.

18.7 The SERVICE PROVIDER shall promptly report to the City a finding by a court of competent jurisdiction that the SERVICE PROVIDER or any attorney providing services under this Agreement has been found to have provided ineffective assistance of counsel for services provided pursuant to this Agreement.

18.8 Client Eligibility for Legal Services. SERVICE PROVIDER shall qualify for assistance, and provide services to only those clients that meet the eligibility criteria for the Right to Counsel Program as specified under the requirements of the Grants and program policy.

18.9 The parties agree that SERVICE PROVIDER shall submit reports that contain general, non-identifying documentation that each client has, and clients in the aggregate have, met the above eligibility criteria. The CITY shall only have access to non-privileged records under this Agreement.

18.10 SERVICE PROVIDER shall comply with the Texas Disciplinary Rules of Professional Conduct pertaining to conflicts of interest created by SERVICE PROVIDER representing clients in matters described within the scope of work set out in Attachments II – IV to this Agreement. In the event a potential conflict arises, the Parties agree to follow the process

stipulated in Article IX – Adversarial Matters to resolve the conflict. The City does not consent to the SERVICE PROVIDER representing clients in any adversarial matter involving the Scope of Work described within the Attachments II – IV. In any situation, whether it involves the Scope of Work or any other matter, where SERVICE PROVIDER represents a client in a matter adversarial to the city, the Parties agree to follow the process stipulated in Article IX – Adversarial Matters to resolve the situation. SERVICE PROVIDER shall not communicate with any member of city staff or city official without express authorization by the City Attorney’s office. To the extent possible, all requests for information or documents pertaining to complaints against the city or to assist clients with city processes and programs must be made through the City Attorney’s office or a member of city staff that has been designated or approved by the City Attorney’s office.

## **XVIX. COMPLIANCE**

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

## **XX. NONWAIVER OF PERFORMANCE**

20.1 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 XVI., 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.

## **XXI. LAW APPLICABLE**

### **CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS PROHIBITED**

Texas Government Code §2252.152 provides that a governmental entity may not enter a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Respondent 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 Respondent’s certification. If found to be false, or if Respondent is identified on said list during its contract with City, City may terminate the Contract for material breach

## **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.

## **PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

Texas Government Code §2271.002 provides that a governmental entity may not enter 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.

## **XXII. LEGAL AUTHORITY**

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

## **XXIII. PARTIES BOUND**

23.1 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.

## **XXIV. CAPTIONS**

24.1 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.

## **XXV. INCORPORATION OF EXHIBITS**

25.1 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.

## **XXVI. ENTIRE AGREEMENT**

26.1 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 XVI., Amendments.

*[Signature page follows.]*

EXECUTED and AGREED to by:

CITY:

CITY OF SAN ANTONIO

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Lori Houston  
Assistant City Manager

SERVICE PROVIDER:

TEXAS RIO GRANDE LEGAL AID, Inc., a Texas Non-Profit Corporation

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Robert Doggett, Executive Director

APPROVED AS TO FORM:

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Andrew Segovia, City Attorney

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