

STATE OF TEXAS

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**PROFESSIONAL SERVICES AGREEMENT
FOR THE DEVELOPMENT OF A HOUSING
SERVICES PORTAL**

COUNTY OF BEXAR

This Agreement (“Agreement”) is entered into by and 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 ____ day of _____, 2023 and San Antonio Community Resource Directory (“SACRD”), a Texas nonprofit corporation, (hereinafter referred to as “PROVIDER”), 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 Neighborhood and Housing Services Department.

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

1.4 “Services” shall mean the Scope of Services and Budget 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 _____ and terminate on _____ unless earlier termination shall occur pursuant to any provision hereof.

2.2 Notwithstanding any other provisions of the Agreement, and in order 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 budget and appropriation process of the City of San Antonio’s City Council. 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 of this Agreement.

III. SCOPE OF SERVICES AND BUDGET

3.1 The Scope of Services and Budget are attached hereto and incorporated herein as if thoroughly laid out for all intents and purposes as **Exhibit “A”**.

3.2 PROVIDER agrees to provide the Services in exchange for the compensation described in article **IV. COMPENSATION TO PROVIDER**, to PROVIDER.

3.3 All work performed by 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 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 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 PROVIDER's performance in a satisfactory and efficient manner, as determined solely by Director, of services and activities set forth in this Agreement, CITY agrees to pay PROVIDER an amount not to exceed **NINETY-NINE THOUSAND, NINE HUNDRED FIFTY AND 00/100 DOLLARS (\$99,950.00)**.

4.2 CITY and PROVIDER may agree to one extension of an additional two (2) years for ongoing maintenance and development needs. If the Parties agree to extend the contract under this section, City will pay PROVIDER additional compensation up to **FIFTY-SIX THOUSAND, FIVE HUNDRED TWENTY-FIVE AND 00/100 DOLLARS (\$56,525.00)**.

4.3 CITY will reimburse PROVIDER up to **EIGHTEEN THOUSAND, FIVE HUNDRED TWENTY-FIVE AND 00/100 DOLLARS (\$18,525.00)** for Web Content Accessibility Guidelines (WCAG) 2.1 Level AA certifications.

4.4 In no event shall the CITY pay PROVIDER more than **ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$175,000.00)**. It is understood that the amounts paid under this Article IV shall be the maximum amount to be paid to PROVIDER by CITY for the performance of the Services under this Agreement, including the 2-year extension. PROVIDER shall be solely responsible for all other costs associated with the Services.

4.5 CITY shall pay PROVIDER fifty percent (50%) of the compensation stated in section 4.1 at the time of execution of the Agreement, twenty percent (20%) at the time the portal launch is previewed, and thirty percent (30%) at the time of the public launch of the portal. Thereafter, PROVIDER shall submit invoices to the CITY monthly. CITY will reimburse PROVIDER for approved costs within thirty (30) days of receipt and approval by the Director or his/her designee. CITY reserves the right to remit final payment only after all deliverables, as set

forth in **Exhibit “A”**, have been completed and met the satisfaction of the Director or his/her designee. Invoices shall be submitted in a form acceptable to CITY. Invoices shall be submitted to: City of San Antonio, Neighborhood and Housing Services Department, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.6 No additional fees or expenses of PROVIDER shall be charged by PROVIDER nor be payable TO PROVIDER by CITY. The Parties hereby agree that all compensable expenses of PROVIDER have been provided for in the total payment to PROVIDER as specified in this Article IV. Total payments to PROVIDER cannot exceed that amount set forth in Sections 4.1 through 4.4 above without prior approval and agreement of all Parties, including, if necessary, the City of San Antonio’s City Council, evidenced in writing or by adoption of ordinance.

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

4.8 Adversarial Proceedings – No monies paid to PROVIDER under this Agreement can be used to pay costs pertaining to or in any way fund any adversarial proceeding against the CITY relating to this Agreement or in any manner involving the CITY and PROVIDER. PROVIDER shall provide the City with reasonable notice and make a good faith effort to resolve any claims or disputes, regardless of funding source, between the Parties, or claims in which the PROVIDER is a party, before starting or participating in any adversarial proceeding against the City. “Adversarial Proceeding” shall mean any matter in which interests of the CITY and PROVIDER are not aligned or are otherwise contrary to one another. This includes a matter in dispute, litigation, claim or other action taken against the CITY in law or equity or based upon any other legal theory, seeking any remedy from the CITY.

V. OWNERSHIP OF DOCUMENTS & DATA

5.1 Any and all writings, documents, or information in whatsoever form and character produced by 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 PROVIDER.

5.2 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.

5.3 All confidential information and other data of a disclosing Party (collectively, a “**Disclosing Party’s Data**”) that the other Party receives, has access to, or otherwise obtains by virtue of the transactions contemplated by this Agreement and any results of processing such Disclosing Party’s Data or derived in any way therefrom shall at all times remain the exclusive property of the disclosing Party, and the receiving Party shall acquire no right or interest in such Disclosing Party’s Data other than the right to use in connection with this Agreement.

Confidential information and Disclosing Party's Data shall not include any information or data that (a) was rightfully known to the receiving Party prior to receiving the information from the disclosing Party, as demonstrated by the receiving Party's records; (b) was or becomes publicly available through no fault of the receiving Party or any third party under a continuing obligation of confidentiality; (c) is disclosed with the prior written approval of the disclosing Party; or (d) is determined by law, regulation, or by a court with competent jurisdiction to be public information.

5.4 All City-owned data and data owned by a third-party user that is provided to PROVIDER for purposes of this Agreement shall remain the exclusive property of City or such third-party user, as applicable, and PROVIDER shall acquire no right or interest in any such data other than the right to use such data to provide the services describe in **Exhibit "A"** (collectively, the **"City Data"**).

5.5 PROVIDER shall have the right to collect and use all web-traffic data and other information relating to the provision, use, and performance of the services and related systems and technologies (collectively, the **"Usage Data"**), to (a) maintain and further develop, improve, and enhance the service and related systems and technologies; (b) develop and improve PROVIDER's other products and services; and (c) compile, anonymize, synthesize, and analyze such data for business purposes. PROVIDER shall own all right, title, and interest in any Usage Data, including any related intellectual property rights.

5.6 PROVIDER shall maintain a commercially reasonable level of data security for all Web Portal data in accordance with City's Administrative Directive 7.3a Data Security.

VI. RECORDS RETENTION

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

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

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 either party upon written notice, which notice shall be provided in accordance with article **VIII. Notice**.

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**.

7.3.2. Notification of any investigation, claim or charge by a local, state, or federal agency involving fraud, theft, or the commission of a felony.

7.4 Defaults With Opportunity for Cure. Should PROVIDER 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. PROVIDER shall have two (2) calendar days after receipt of the written notice, in accordance with article **VIII. Notice**, to cure such default. If PROVIDER fails to cure the default within such two (2) 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.

7.4.1. Bankruptcy or selling substantially all of company’s assets.

7.4.2. Failing to perform or failing to comply with any covenant herein required.

7.4.3. Performing unsatisfactorily as determined by the Director.

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 Regardless of how this Agreement is terminated, 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 PROVIDER, or provided to PROVIDER, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by PROVIDER in accordance with article **VI. Records Retention**. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at PROVIDER's sole cost and expense. Payment of compensation due or to become due to PROVIDER is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, PROVIDER shall submit to CITY its claims, in detail, for any monies owed by CITY for Services performed under this Agreement through the effective date of termination. Failure by 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 PROVIDER of any and all right or claims to collect moneys that PROVIDER may rightfully be otherwise entitled to for Services performed pursuant to this Agreement.

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

7.9 Termination not sole remedy. In no event shall CITY's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue PROVIDER for any default hereunder or other action.

7.10 **Force Majeure.** The obligations of a Party will be suspended by the occurrence of any event beyond its reasonable control and not caused by its negligence, that renders its performance impossible including, acts of God, war, fire, flood, accident, strike, casualty, power failures, interruptions in the Internet, pandemics, governmental acts, orders or restrictions or inability to obtain suitable and sufficient labor and materials (each, an "**Force Majeure Event**"). The Party invoking a Force Majeure Event shall (a) send written notice thereof to the other within a reasonable time after the invoking Party knew or should have known that performance would be delayed or prevented due to the Force Majeure Event and (b) take reasonable steps to limit the duration and effect of any such Force Majeure Event.

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
Neighborhood and Housing Services Department
P.O. Box 839966
San Antonio, TX 78283-3966

If intended for PROVIDER, to:

Bill Neely
Executive Director
San Antonio Community Resource Directory (SACRD)
1150 N. Loop 1604 W.
San Antonio, Texas 78248

IX. CITY'S RIGHT TO AUDIT

9.1 The CITY reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by CITY during the performance period. The CITY may engage a Certified Public Accounting (CPA) firm, or other personnel as designated by the CITY, to perform such audit(s) or reviews. The CITY reserves the right to determine the scope of every audit. In accordance herewith, PROVIDER agrees to make available to CITY all accounting and Project records. PROVIDER acknowledges that this provision shall not limit the CITY from additional follow-up to audits or reviews, as necessary, or from investigating items of concern that may be brought to the CITY's attention which are other than routine.

9.2 PROVIDER shall during normal business hours make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such Agreement has not been accepted, then the PROVIDER shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by PROVIDER in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

9.3 The CITY may, in its sole and absolute discretion, require the PROVIDER to use any and all of the CITY's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the PROVIDER shall abide by such requirements.

9.4 When an audit or examination determines that the PROVIDER has expended funds or incurred costs which are questioned by the CITY and/or any applicable state or federal agency, the PROVIDER shall be notified and provided an opportunity to address the questioned expenditure or costs.

9.5 PROVIDER agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by PROVIDER shall be the sole responsibility of the PROVIDER and shall not be paid from any Project funds received by the PROVIDER under this Agreement.

9.6 If the CITY determines, in its sole discretion, that PROVIDER is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the PROVIDER pay for such audit from non-CITY resources if PROVIDER is found to be at fault.

X. INSURANCE

10.1 No later than 30 days before the scheduled service under this Agreement, PROVIDER must provide a completed Certificate(s) of Insurance to CITY's Neighborhood and Services Department. The certificate must be:

- clearly labeled with the legal name of the event in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance); and
- properly endorsed and have the agent's signature, and phone number.

10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY's Risk Management Department. No officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.

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

10.4 The CITY's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

10.5 PROVIDER shall obtain and maintain in full force and effect for the duration of this

Agreement, at PROVIDER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the LICENSEE claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation* 2. Employers' Liability*	Statutory \$500,000/\$500,000/\$500,000
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	For Bodily Injury and Property Damage of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$500,000 per occurrence
5. Professional Liability – (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$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.
6. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

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

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

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

10.8 PROVIDER's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies;
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim;
- PROVIDER shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, PROVIDER shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend 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.

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

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

10.12 PROVIDER's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by CITY for liability arising out of operations under this Agreement.

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

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

XI. INDEMNIFICATION

11.1 PROVIDER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, 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 PROVIDER's activities under this AGREEMENT, including any acts or omissions of PROVIDER, any agent, officer, director, representative, employee, PROVIDER, volunteer or subcontractor of 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, without in any way waiving the immunities afforded CITY under Texas law. IN THE EVENT 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 Defense Counsel – CITY shall have the right to select or to approve defense counsel to be retained by PROVIDER in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. 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 PROVIDER fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and 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 PROVIDER's insurance provider who shall retain the right to select defense counsel on PROVIDER's behalf pursuant to any contract between PROVIDER and said insurance provider.

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

PROVIDER further agrees to abide by the following regarding intellectual property rights:

11.4 PROVIDER shall pay all royalties and licensing fees applicable to its performance hereunder. PROVIDER **SHALL HOLD CITY HARMLESS AND INDEMNIFY CITY FROM THE PAYMENT OF ANY ROYALTIES,**

DAMAGES, LOSSES OR EXPENSES INCLUDING ATTORNEY'S FEES FOR SUITS, CLAIMS OR OTHERWISE, GROWING OUT OF INFRINGEMENT OR ALLEGED INFRINGEMENT OF COPYRIGHTS, PATENTS, TRADEMARKS, TRADE SECRETS, OR MATERIALS AND METHODS USED IN OR RELATED TO THE WEB PORTAL OR THE SERVICES PROVIDED TO CITY. IT SHALL DEFEND ALL SUITS FOR ANY INFRINGEMENT CLAIM OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. Further, if PROVIDER has reason to believe that any part of the Web Portal or Services infringe on an intellectual property right, it shall promptly give such information to City.

4.3.2 Upon receipt of notification that a third party claims that any part of the Web Portal or Services, or any other intellectual property, infringes upon any United States or International patent, copyright, or trademark, PROVIDER will use commercially reasonable efforts to promptly and without undue delay:

- Obtain, at PROVIDER'S sole expense, the necessary license(s) or rights that would allow City to continue using the Web Portal and Services or any other intellectual property as the case may be, or
- Alter the Web Portal or Services so that the alleged infringement is eliminated.

4.3.3 **PROVIDER FURTHER AGREES TO:**

- **ASSUME THE DEFENSE OF ANY CLAIM, SUIT, OR PROCEEDING BROUGHT AGAINST CITY FOR INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT, TRADEMARK OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE USE AND/OR SALE OF THE WEB PORTAL UNDER THIS AGREEMENT,**
- **ASSUME THE EXPENSE OF SUCH DEFENSE, INCLUDING COSTS OF INVESTIGATIONS, REASONABLE ATTORNEYS' FEES, EXPERT WITNESS FEES, DAMAGES, AND ANY OTHER LITIGATION-RELATED EXPENSES, AND**
- **INDEMNIFY CITY AGAINST ANY MONETARY DAMAGES AND/OR COSTS AWARDED IN SUCH SUIT;**

Provided that:

- PROVIDER is given sole and exclusive control of the defense and all negotiations relative to the settlement thereof, but that PROVIDER agrees to consult with City Attorney of City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of City,

- City provides all reasonable cooperation to assist the defense of such claim,
- The Web Portal is used by City in the form, state, or condition as delivered by PROVIDER and in accordance with this Agreement,
- The liability claimed shall not have arisen out of, in full or in part, City's negligent act or omission, and
- City promptly provides PROVIDER with written notice within 10 business days following the formal assertion receipt of any claim or threat of a claim with respect to which City asserts that PROVIDER assumes responsibility under this Section.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 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 PROVIDER. PROVIDER, its employees or its subcontractors shall perform all necessary work subject to the satisfaction of Director and all personnel and subcontractors of PROVIDER shall be subject to the performance standards applicable to PROVIDER under this Agreement. If PROVIDER retains any employees or subcontractors to work or provide services pursuant to this Agreement, PROVIDER shall notify the CITY within ten (10) days of retention in writing.

12.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless a 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 PROVIDER. CITY shall in no event be obligated to any third party, including any subcontractor of PROVIDER, 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 Director.

12.3 Except as otherwise stated herein, 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, PROVIDER shall remain liable for completion of the Services outlined in this Agreement in the event of default by the successor PROVIDER, assignee, transferee, or subcontractor.

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

XIII. INDEPENDENT CONTRACTOR

13.1 PROVIDER covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of CITY; that 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 consultants; that the doctrine of respondeat superior shall not apply as between CITY and PROVIDER, 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 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 PROVIDER under this Agreement and that PROVIDER has no authority to bind the CITY.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

14.1 As a condition of entering into this agreement PROVIDER represents and warrants that it will comply with the CITY's Commercial Nondiscrimination Policy, as described under section 111.C. I of the CITY's SBEDA Ordinance. As part of such compliance, PROVIDER shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers nor shall PROVIDER retaliate against any person for reporting instances of such discrimination. PROVIDER shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. PROVIDER understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this agreement, disqualification of PROVIDER from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

XV. CONFLICT OF INTEREST

15.1 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 percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity 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, 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. 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 AND CHANGE ORDERS

16.1 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 PROVIDER. Director or his/her designee shall have authority to execute amendments on behalf of the CITY without further action by the San Antonio CITY Council, subject to the requirements of the CITY's charter or contracting policies and contingent upon appropriation of funds for any increase in expenditures by the CITY.

16.2 **Change Orders.** In order to comply with Texas law governing purchases made by municipalities, the following rules shall govern all change orders made under this Agreement:

- Any change orders that become necessary during the term of this Agreement as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment or supplies to be furnished, not to exceed the amount of \$50,000.00, must be in writing and conform to the requirements of City Ordinance 2011-12-08-1014, as hereafter amended.
- Except as otherwise provided in Ordinance 2011-12-08-1014, as amended, any other change will require approval of the City Council, City of San Antonio.
- No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated herein.

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. LICENSES/CERTIFICATIONS

18.1 PROVIDER warrants and certifies that PROVIDER 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.

XIX. COMPLIANCE

19.1 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

21.1 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.

21.2 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.

21.3 Texas Government Code §2271.002 provides that a governmental entity may not enter into a contract with a value of \$100,000 or more with a company for goods or services, unless the contract contains a written verification from the company that it:

- i. does not boycott Israel; and
- ii. will not boycott Israel during the term of the contract.

“Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” means a for-profit, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations with ten (10) or more full time employees that exists to make a profit. “Company” does not include a sole proprietorship.

21.4 By submitting an offer to, or executing contract documents with, the City of San Antonio, PROVIDER, if it meets the definition of “Company,” hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Agreement. CITY hereby relies on PROVIDER’s verification. If found to be false, CITY may terminate this Agreement for material breach.

21.5 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 §2252.153 or §2270.0201. By submitting an offer to or executing contract documents with the City of San Antonio, PROVIDER hereby verifies that: it is not identified on such a list; and that it will notify City should it be placed on such list during the term of this contract. City hereby relies on PROVIDER’s verification. If found to be false, or if PROVIDER is identified on such list during the term of this contract, City may terminate this contract for material breach.

21.6 Texas Government Code Chapter 2274 provides that a governmental entity may not enter into a contract for the purchase of goods or services having a value of \$100,000 or more with a company having ten or more full-time employees unless the contract contains a written verification from the company that it:

- i. does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- ii. will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21.7 By submitting an offer to or executing contract documents with the City of San Antonio, PROVIDER 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 this contract against a firearm entity or firearm trade association. City hereby relies on PROVIDER’s verification. If found to be false, City may terminate this contract for material breach.

21.8 Pursuant to Texas Government Code Chapter 2274, a governmental entity may not enter into a contract for goods or services having a value of \$100,000 or more with a company having ten or more full-time employees unless the contract contains a written verification from the company that it:

- i. does not boycott energy companies; and
- ii. will not boycott energy companies during the term of this contract.

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

21.10 As a party to this Agreement, PROVIDER 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.

XXII. LEGAL AUTHORITY

22.1 The signer of this Agreement for PROVIDER represents, warrants, assures, and guarantees that he or she has full legal authority to execute this Agreement on behalf of PROVIDER and to bind 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 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.

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,
a Texas municipal corporation

Lori Houston, Assistant City Manager

PROVIDER:

SAN ANTONIO COMMUNITY RESOURCE DIRECTORY (SACRD),
a Texas nonprofit corporation

Bill Neely, Executive Director

APPROVED AS TO FORM:

Jameene Yvonne Williams
Assistant City Attorney

ATTACHMENT(S):

Exhibit "A" – Scope of Work and Budget

EXHIBIT “A”

SCOPE OF WORK AND BUDGET

San Antonio Community Resource Directory (SACRD) shall perform the following:

1. Develop a platform within SACRD.org with a specialization on housing related services specific to San Antonio, the “Housing Services Portal”, a virtual one-stop shop for housing assistance. The Portal will focus on helping individuals find services beyond finding rental options, such as rental and utility assistance, tenant’s rights, legal assistance, eviction remediation, homelessness services, home buyer assistance, home repairs, aging in place, relocation services, etc. The Portal will be available in English and Spanish and will include City of San Antonio branding in compliance with City brand standards.
 - a. Initial preview of the Portal will be ready by end of January 2024 and will be available by invitation to users within the housing service providers for comment.
 - b. Public launch and general availability by the end of April 2024.
2. Phases of development, user previews, and preview launch (January 2024)
 - a. Convene an advisory group composed of representatives from housing services providers.
 - b. Develop the taxonomy of services to be used and the data collection tools to maintain the specific attributes of identified programs.
 - c. Interview all housing service providers already known to SACRD, collect additional detail on services being provided, and load data into the Portal.
 - d. Develop public facing guided interview and results user interfaces.
 - e. Conduct feedback sessions with the advisory group and invited public users.
 - f. Launch by-invitation preview site.
3. Phases of public launch (April 2024)
 - a. Conduct user groups and comment sessions with housing service providers and incorporate feedback as needed.
 - b. Identify housing service organizations not already included in SACRD.org and add relevant program information.
 - c. Public launch event with COSA representatives, housing service providers, and media.
4. On-going promotion
 - a. Conduct at least one public session per month following the preview launch to increase awareness of the portal, solicit feedback, and facilitate adoption of the portal.
 - c. Create and distribute printed materials through housing service provider’s client interactions and relevant public events such as wellness fairs, expos, etc.

- d. Continue to add data from service providers as it becomes available.
5. Analytics and reporting following public launch
- a. Provide monthly statistics on the number of portal visitors, queried services, how many programs are added, updated, and removed from the portal. Users will not be asked to register with the portal, therefore all usage data will be anonymous.
6. Vendors who develop and/or modify City of San Antonio (City) websites, must meet a fundamental requirement that all information and communications technology (ICT) is accessible to, and usable by, people with disabilities. This meets City obligations under the Americans with Disabilities Act (ADA) of 1990 (as amended 2008) and the Rehabilitation Act of 1973, sections 503 and 508. Under Section 508, the City must provide employees and members of the public with disabilities comparable access to ICT as people who do not have disabilities.

Vendors must adhere to the following standards for ICT: Section 508 Standards and Web Content Accessibility Guidelines (WCAG) 2.1 Level AA when applicable based on the Scope of Work (SOW). These standards are established as minimum requirements and Vendors are expected to deliver access at higher levels when technically feasible. As part of the Vendor's effort to ensure access for individuals with disabilities, the Vendor agrees to:

- i) Create baselining efforts with accessibility by providing a Voluntary Product Accessibility Template (VPAT). Implement proposed remediation solutions with the Project Manager and City's ADA Coordinator. Define and agree to mutually agreed sprint capacity.
- ii) The Vendor shall develop or configure, test, stage, and release accessibility updates by applying iterative processes utilizing accessibility methodology and a frequent release cycle. This may include various testing stages incorporating testers with various types of disabilities (physical, sensory, cognitive, etc.)
- iii) Accessibility deliverables must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) Project Manager and City's ADA Coordinator or designate.
- iv) All deliverables must be submitted in a format approved by the Agency contract manager.
- v) If the deliverable cannot be provided within the scheduled timeframe, the Vendor is required to contact the Project Manager and City's ADA Coordinator in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
- vi) A request for a revised schedule must be reviewed and approved by the Project Manager and City's ADA Coordinator before placed in effect. Contract Terms and Conditions may dictate remedies, costs, and other actions based on the facts related to the request for a revised schedule.
- vii) The City will complete a review of each submitted deliverable within specified working days for the date of receipt.

- viii) A kickoff meeting will be held at a location and time selected by the City where the Vendor and its staff will be introduced to the City.
- ix) The Vendor assures the City:
 - o Content and coding updates implemented throughout the lifetime of the contract maintain accessibility.
 - o If accessibility is not maintained, a remediation solution and mutually defined and agreed sprint capacity will be developed with the Project Manager and City's ADA Coordinator when accessibility barriers are identified within the first 12 months after customer receipt of final product.
 - o Timeline for remediation must be within the contract length.
 - o Additional accessibility testing will be required to ensure conformance with accessibility standards and guidelines.
 - o Implementation of accessibility remediation solutions required due to content and coding updates will be at no cost to the customer.
- x) The Provider agrees to work with a digital usability firm of the City's choosing if applicable.