

**AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
ESD LIMITED D/B/A ESD & ASSOCIATES
FOR
EV-SA OUTREACH CAMPAIGN**

**STATE OF TEXAS
COUNTY OF BEXAR**

This Integration Agreement (hereinafter referred to as the “Agreement”), made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as “City”), and

esd Limited d/b/a esd & associates
1202 W. Bitters Rd. Building #9
San Antonio, TX 78216

a Partnership formed under the laws of the State of Texas (hereinafter referred to as “esd” or “Contractor”), said Agreement being executed by Christine Kleha, CEO/COO, esd Limited.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications (RFQ) for “EV-SA Public Outreach Campaign (RFQ 21-034; RFx 6100013746)”, issued by the City on June 4, 2021;
2. Exhibit II, Addendum I to the RFQ, dated July 1, 2021;
3. Exhibit III, Pricing Schedule, “EV-SA Pricing Structure and Annual Forecast” provided by esd marketing on November 11, 2021.

Referenced Documents: Further, esd’s response to the RFQ, dated July 7, 2021, is also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFP governs esd’s response; this Integration Agreement governs both the RFP and response in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

Compensation: City will pay Contractor for professional services to build upon established EVSA branding through a comprehensive public information campaign to include the creation of collateral material and surveys, assisting with coordinating in-person and virtual education and outreach events, and augmenting the general public's awareness of electric vehicles through

creative outlets including traditional and social media, as provided in the contract documents, in support of the RFQ. This Agreement is funded by a grant from the Congestion Mitigation Air Quality Improvement Program (CMAQ) through the Texas Department of Transportation (TxDOT) and total budget sums for the first year of this Agreement shall not exceed \$30,000.00.

Contractor acknowledges and agrees that the CMAQ grant requires marketing and outreach activities conducted by the local government, through the Contractor, in support of the promotion and operation of the program within the City. A minimum of fourteen (14) activities shall be conducted annually during the agreement period, and each option year if the City exercises the renewal option. Marketing and outreach activities shall be in the form of meetings, festivals, individual or group presentations, or any other activity intended to increase awareness of the Program. Contractor shall provide documentation of each activity to the City and any additional information requested by the Director, Office of Sustainability.

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

In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director, Office of Sustainability (hereinafter "Director"), of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed thirty thousand dollars (\$30,000.00) as total compensation for the first year of the Agreement. The City will pay a monthly retainer of \$2,500.00 as base pricing structure for services by esd to be reimbursed at the rates provided in Exhibit III.

It is understood and agreed by the Parties that the City does not guarantee any minimum volume of work, and that Contractor will be paid for actual work performed and for allowable expenses, provided that Contractor shall present City with an invoice for all expenses and services monthly within 14 days of the end of the month, in such detail as required by the Director. Payment shall be made no more than 30 calendar days following receipt and approval of each invoice.

Work Start Date: Work shall start immediately upon instruction to esd from the Director or his designee for performance of various City projects described in the RFQ's scope of services or the contract documents identified above.

Term of Performance and Termination Date: The term of this agreement is for one (1) year and shall commence after approval by the City and terminate on December 31, 2022. The City, at its sole option, may renew the Agreement for two (2) additional renewal terms of one (1) year each, under the same terms and conditions, subject to and contingent upon appropriation of funding therefore.

Notice: Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or

upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Douglas Melnick
Office of Sustainability
P.O. Box 839966
San Antonio, Texas 78283

If intended for Contractor, to:

esd Limited d.b.a esd & associates
Attn: Christine Kleha, CEO/COO
1202 W. Bitters Rd. Building #9
San Antonio, TX 78216

Assignment and Subcontracting: Contractor 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 Contractor. Contractor, its employees or its subcontractors shall perform all necessary work. It is City's understanding, and this Agreement is made in reliance thereon, that Contractor intends to use: **None**. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Director, prior to the provision of any services by said subcontractor.

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

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

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 Contractor 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 Contractor shall thereupon cease and terminate, in accordance with the termination

provisions above, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

Nonwaiver of Performance: Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the Director. 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.

Independent Contractor: Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, 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 Contractor. 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 Contractor under this Agreement and that the Contractor has no authority to bind the City.

Termination: For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated above, or earlier termination pursuant to any of the provisions hereof. This Agreement may be terminated without cause by City upon 90 calendar days written notice. Upon written notice City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided above in Assignment and Subcontracting, which shall constitute an Event for Cause under this Agreement.

Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice to cure such default. If Contractor fails to cure the default within such fifteen-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 Contractor 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 Contractor against Contractor'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.

Failure to comply with the SBEDA terms and conditions.
Bankruptcy or selling substantially all of company's assets.
Failing to perform or failing to comply with any covenant herein required.
Performing unsatisfactorily.

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.

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

Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor 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 Contractor 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 Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

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 Contractor for any default hereunder or other action.

Amendments: 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 Contractor, and signed by the Director. Substantive changes, to include an increase in the amount of compensation beyond the authorized budget limit, shall require City Council approval.

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.

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.

Entire Agreement: This Agreement, together with its exhibits as listed above, 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.

Agreed, Consented to, and Executed this _____ day of December, 2021.

CITY OF SAN ANTONIO

esd Limited, d/b/a esd & associates

David McCary, Assistant City Manager



Christine Kleha, CEO/COO

APPROVED AS TO FORM:

Office of the City Attorney
Andrew Segovia, City Attorney

By: _____
Assistant City Attorney

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