

INTEGRATION AGREEMENT BETWEEN
THE SAN ANTONIO EARLY CHILDHOOD EDUCATION MUNICIPAL
DEVELOPMENT CORPORATION (Pre-K 4 SA)

AND

THE DEBERRY GROUP, LLC D/B/A TALK STRATEGY

FOR

PRE-K 4 SA MARKETING SERVICES

This Pre-K 4 SA Marketing Services Agreement (this “**Agreement**”) is entered into by and between the San Antonio Early Childhood Education Municipal Development Corporation, a Texas Municipal Development Corporation (“**Corporation**”) **Corporation**, and The DeBerry Group, LLC d/b/a talk Strategy, (“**Contractor**”), 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. TERM

- 1.1 Original Term. The term of this Agreement begins June 1, 2022 after award by the Board for the Corporation, and shall be for a period of four (4) years ending on May 31, 2026 (the “**Term**”), unless renewal and extension or earlier termination occurs pursuant to any other provision contained in this Agreement. Annual payments shall be subject to and contingent upon appropriation of funding therefor.
- 1.2 Renewal. At the Corporation’s option, this Agreement may be renewed under the same terms and conditions for four (4) additional one (1) year periods. Renewals shall be in writing and signed by the Corporation’s Chief Executive Officer (“**CEO**”), without further action by the Corporation’s Board, subject to and contingent upon appropriation of funding therefor.
- 1.3 Temporary Short Term Extensions. The Corporation shall have the right to extend this Agreement under the same terms and conditions beyond the original Term, on a month to month basis, not to exceed three months. Said month to month extensions shall be in writing, signed by the Corporation’s CEO, and shall not require Corporation’s Board approval, subject to and contingent upon appropriation of funding therefor.
- 1.4 Contractor agrees and understands that the Corporation expects to pay all obligations of this Agreement from a 1/8th cent sales tax approved by the voters of the City of San Antonio. Accordingly, if funding is not received by Corporation in a sufficient amount to

pay any of its obligations under the terms of this Agreement, or if the collection of sales tax is terminated, then this Agreement will terminate and neither Corporation nor Contractor will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement; provided however, that lack of funding will not excuse payment for services rendered.

II. CONTRACT DOCUMENTS

- 2.1 The term “**Contract Documents**” means the documents, which contain the agreements of the Parties with respect to this transaction. The terms and conditions for performance and payment of compensation for this Agreement are set forth in the following Contract Documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes, and shall be interpreted in the order of priority as appears below:
- a. This Integration Agreement;
 - b. Corporation’s RFP/RFQ #21-071; RFX 6100014511, including all exhibits, attachments and addendums thereto (Exhibit A);
 - c. Contractor’s Price Schedule (Exhibit B); and
 - d. Contractor’s Proposal in response to RFP/RFQ #21-071; RFX 6100014511 (Exhibit C).

III. SCOPE OF SERVICES

- 3.1 Contractor agrees to furnish the necessary personnel, materials, services, facilities, and equipment, and otherwise do all things necessary for the performance of the services described in Corporation’s RFP and Contractor’s Proposal, attached hereto and incorporated herein for all purposes as **Attachments A-C**.
- 3.2 Work performed in accordance with Attachments A-C will be considered work performed to the satisfaction of CEO as determined solely by CEO. The determination made by CEO shall be final, binding, and conclusive on all Parties hereto. The Corporation shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to CEO. The Corporation shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor’s work not be satisfactory to CEO; however, the Corporation shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should the Corporation elect not to terminate. The Corporation shall notify Contractor in writing of any decision to withhold payment. Should the Corporation elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.
- 3.3 Contractor covenants and agrees to perform all services described in this Agreement in a workmanlike and professional manner with a high degree of care to ensure accuracy and timeliness. Contractor shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a

member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

- 3.4 Contractor agrees to employ, at its own expense, all personnel required to perform the services described in this Agreement. Personnel employed by Contractor shall neither be employees of nor have any contractual relationship with City or Corporation. All Contractor personnel engaged in providing services under this Agreement shall be fully qualified and shall be authorized or licensed to perform such work as required.

IV. COMPENSATION TO CONTRACTOR

- 4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by CEO, of all services and activities set forth in this Agreement, the Corporation agrees to pay Contractor in a total amount not to exceed \$5,200,000 for the four-year Term referenced in Section 1.1 and any renewals exercised pursuant to Section 1.2, to be charged (a) at an hourly rate of \$139.50 for labor / production services rendered; and (b) at cost, with no commission or markup for media buys, as further evidenced in the Price Schedule, attached hereto and incorporated herein for all purposes as **Attachment B**.
- 4.2 The anticipated annual cost is \$250,000 for labor / production and \$400,000 for media buys for each of the eight (8) years (should all renewals be exercised). Corporation reserves the right to modify the amount expended per year or to modify the distribution of funding between labor/production and media. The anticipated annual cost shall not serve as a cap and the Corporation may request services or buys that exceed the annual amount so long as costs do not exceed the total Agreement value for the entire term.
- 4.3 Contractor shall submit monthly invoices to the Corporation, in a form acceptable to the Corporation, which the Corporation shall pay within thirty (30) days of receipt and approval by CEO. Contractor shall separately submit invoices for labor/production and media so that each month Corporation receives two invoices – 1) Labor/Production and 2) Media. Contractor shall submit invoices to:

(a) City of San Antonio, Finance Department / Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976; or

(b) electronically to the following e-mail address:

accounts.payable@sanantonio.gov.

WITH CC TO: paul.chapman@sanantonio.gov

AND

PreK4SAFiscalOperations@sanantonio.gov

Invoices submitted electronically to the e-mail address above must be in separate .pdf format file. Multiple invoices cannot be submitted in a single .pdf file; however,

Contractor may submit multiple, separate invoice files in a single e-mail. Any required documentation in support of the invoice should be compiled directly behind the invoice in the same .pdf file. Each electronically submitted file must have a unique identifying name that is not the same as any other file name.

- 4.4 Final acceptance of work products and services require written approval by the Corporation. The approving official shall be CEO or designee. Payment will be made to Contractor following written approval of the final work products and services by CEO. The Corporation shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.
- 4.5 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by the Corporation. The Parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in Section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of both Parties, evidenced in writing and, if applicable, approved by the Board for the Corporation, unless scope of work is expanded and mutually agreed upon.

V. OWNERSHIP OF DOCUMENTS/INTELLECTUAL PROPERTY

- 5.1 Any and all writings, documents, or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement shall be provided to the Corporation under an irrevocable, non-exclusive, royalty-free, perpetual license, to be used within the Corporation for the purposes for which they were secured (to the extent of the services being provided by the software). Contractor may provide services similar to the services it is providing to the Corporation to other customers, including but not limited to other cities, municipalities, and government entities.
- 5.2 If this Agreement is terminated because of a breach by Contractor, including but not limited to Contractor ceasing business operations, the foregoing license shall survive the termination of this Agreement and the Corporation shall be permitted to continue to utilize writings, documents, or information in whatsoever form and character, provided that the Corporation is not in breach of any material provision of this Agreement and its actions or inactions did not contribute to Contractor's breach or termination of this Agreement.
- 5.3 Nothing herein shall be construed to grant any right or license to Contractor in or to any material provided to Contractor hereunder by the Corporation or Corporation's participants, including but not limited to any user or resident data, other than the right to use such material solely on behalf of the Corporation in accordance with the terms hereof. All of the foregoing materials, including but not limited to any and all copyrights, trademarks, service marks, and trade names related thereto, are and shall remain the property of the Corporation. The Corporation shall own all right, title, and interest in and to the Corporation's data, as well as any data that is derived from the Corporation's data and provided to the Corporation as part of the services provided hereunder.

5.4 Contractor agrees to abide by the following regarding intellectual property rights:

5.4.1 Contractor shall pay all royalties and licensing fees. Contractor shall hold the Corporation harmless and indemnify the Corporation 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, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Contractor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the Corporation.

5.4.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, Contractor will immediately:

- Obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the Corporation to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be, or
- Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and
- Reimburse the Corporation for any expenses incurred by the Corporation to implement emergency backup measures if the Corporation is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

5.4.3 Contractor further agrees to:

- Assume the defense of any claim, suit, or proceeding brought against the Corporation for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software 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 the Corporation against any monetary damages and/or costs awarded in such suit;

Provided that:

- Contractor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Contractor agrees to consult with the attorney for the Corporation during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the Corporation,
- The software or the equipment is used by the Corporation in the form, state, or condition as delivered by Contractor or as modified without the permission of Contractor, so long as such modification is not the source of the infringement claim,
- The liability claimed shall not have arisen out of the Corporation's negligent act or omission, and
- The Corporation promptly provides Contractor with written notice within fifteen (15) days following the formal assertion of any claim with respect to which the Corporation asserts that Contractor assume responsibility under this Section.

5.5 Undisclosed Features. Contractor warrants that the code, software, and platform provided to the Corporation under this Agreement does not contain any undisclosed features or functions that would impair or might impair the Corporation's use of the equipment, code, software or platform. Specifically, but without limiting the previous representation, Contractor warrants there is no "Trojan Horse," lock, "time bomb," backdoor or similar routine. This Agreement shall not now nor will it hereafter be subject to the self-help provisions of the Uniform Computer Information Transactions Act or any other law. Contractor specifically disclaims any unilateral self-help remedies.

VI. RECORDS RETENTION

- 6.1 Contractor 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 Corporation and City of San Antonio ("City") at their respective offices, at all reasonable times and as often as the Corporation 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 the Corporation, City and any of its authorized representatives.
- 6.2 Contractor 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, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that the Corporation and City shall have access to any and all such documents at any and all times,

as deemed necessary by the Corporation, during said retention period. The Corporation and/or City may, at its election, require Contractor to return the documents to the Corporation and/or City at Contractor's expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents at its sole cost and expense.

- 6.3 Contractor shall notify the Corporation and City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that the Corporation and 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 I. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by either party without cause upon fifteen (15) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. Payment will be made for work performed prior to termination.
- 7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, the Corporation may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by the Corporation.
- 7.4 Defaults with Opportunity for Cure. Should Contractor 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. The Corporation shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have thirty (30) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such thirty (30) day cure period, the Corporation shall have the right, without further notice, to terminate this Agreement in whole or in part as the Corporation deems appropriate, and to contract with another consultant to complete the work required in this Agreement. The Corporation shall also have the right to offset the cost of said new Agreement with a new consultant against Contractor's future or unpaid invoice(s), subject to the duty on the part of the Corporation to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Article IX. Non-Discrimination;
 - 7.4.2 Bankruptcy or selling substantially all of company's assets;
 - 7.4.3 Neglect or failure to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any amendment hereto; or
 - 7.4.4 Performing unsatisfactorily.
- 7.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to the Corporation or to such person(s) or firm(s) as the Corporation may designate, at no additional cost to the Corporation, 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 the Corporation, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by the Corporation 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 by the Corporation.
- 7.7 Corporation shall pay Contractor for conforming goods delivered and services provided to the Corporation, offset by any amounts due and owing from Contractor to Corporation. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to the Corporation its claims, in detail, for the monies owed by the Corporation 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 the Corporation and constitute a **Waiver** by Contractor of any and all right or claims to collect monies that Contractor 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, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall the Corporation's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of the Corporation's remedies, nor shall such termination limit, in any way, at law or at equity, the Corporation's

right to seek damages from or otherwise pursue Contractor 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 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 the Corporation, to:

Dr. Sarah Baray, CEO
The San Antonio Early Childhood
Education Municipal Development
Corporation 7031 S. New Braunfels
San Antonio, TX 78223

If intended for Contractor, to:

The DeBerry Group, LLC d/b/a talk
Strategy
Attn: Anamaria Suescun-Fast
110 Broadway, Suite 625
San Antonio, Texas 78205

- 8.2 Change of Address. Notice of change of address by any party must be made in writing and mailed to the other party within fifteen (15) business days of such change. All invoices, notices, requests, or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the invoice, notice, request, or consent shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the party entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

IX. NON-DISCRIMINATION

- 9.1 City Nondiscrimination Policy. As a party to this contract, Contractor 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.
- 9.2 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this

Agreement, Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the Corporation's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor 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 the company retaliate against any person for reporting instances of such discrimination. The company 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 Corporation's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in Corporation contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the Corporation pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to Corporation contracts.

X. INSURANCE

- A) Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's The San Antonio Early Childhood Education Municipal Development Corporation (Pre-K 4 SA Department), which shall be clearly labeled "Pre-K 4 SA Marketing 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 Corporation or City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the San Antonio Early Childhood Education Municipal Development Corporation (City's Pre-K 4 SA Department.) No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- B) Both the City and Corporation reserve 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 a modification be permitted whereby City or Corporation may incur increased risk.

- C) Contractor's financial integrity is of interest to the City and Corporation; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor'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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$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 Coverage)	\$1,000,000 per claim, to pay as damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

- D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names Contractor and the City and Corporation as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the Corporation 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 or Corporation Board 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.

- E) As they apply to the limits required by the Corporation, the City and Corporation shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements Contractor shall be required to comply with any such requests and shall submit a copy of the requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from such changes.

City of San Antonio
Attn: The San Antonio Early Childhood Education Municipal Development Corporation
(Pre-K 4 SA Department)
P.O. Box 839966
San Antonio, Texas 78283-3966

- F) Contractor 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 and Corporation, 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 Corporation, 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 or Corporation where the City or Corporation 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 and Corporation; and
 - 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.
- G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. Corporation shall have the option to suspend Contractor'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.
- H) In addition to any other remedies the City or Corporation may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Corporation shall have the right to order Contractor to

stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

- I) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- J) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio or Corporation for liability arising out of operations under this Agreement.
- K) 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 or Corporation shall be limited to insurance coverage provided.
- L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CORPORATION AND CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CORPORATION AND CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage, made upon the CORPORATION and/or CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant, or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors, and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CORPORATION or CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CORPORATION OR 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 CORPORATION OR 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. CONTRACTOR shall advise the CORPORATION in writing within twenty-four (24) hours of any claim or demand against the CORPORATION, CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CORPORATION AND CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 11.3 Defense Counsel. The Corporation shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify the Corporation, unless such right is expressly waived by the Corporation in writing. CONTRACTOR shall retain Corporation approved defense counsel within ten (10) business days of the Corporation's written notice that the Corporation is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, the Corporation shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by the Corporation. The Corporation shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, 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 CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 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.
- 12.2 Before utilizing any subcontractor to perform any part of the work or assigning work identified in this Agreement, Contractor shall seek written authorization from the CEO, who shall have the sole discretion to approve or reject such a request. 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 Corporation, 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. The Corporation 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 Corporation.

- 12.3 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 Corporation. 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, 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 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, the Corporation may, at its option, cancel this Agreement and all rights, titles, and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to the Corporation 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 the Corporation, which the Corporation sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

- 13.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant, or employee of the Corporation; 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 “respondeat superior” shall not apply as between the Corporation 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 the Corporation and Contractor. The Parties hereto understand and agree that the Corporation 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 Contractor under this Agreement and that Contractor has no authority to bind the Corporation.

XIV. CONFLICT OF INTEREST

- 14.1 Contractor acknowledges that it is informed that the Board for the Corporation has adopted the Ethics Code for the City of San Antonio, which prohibits a City or Corporation officer or employee, from having a financial interest in any contract with the Corporation or City, or any City agency such as city owned utilities. An officer or employee has a prohibited “financial interest” in a contract with the Corporation or City or in the sale to the Corporation or 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 Corporation or City officer or employee; his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;
- An entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or
- An entity in which any individual or entity listed above is (i) a subcontractor on a Corporation or City contract, (ii) a partner or (iii) a parent or subsidiary entity.

14.2 Pursuant to the Section 14.1 above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that none of the above listed individuals or entities is a party to this Agreement. Contractor further warrants and certifies that it has tendered to the Corporation a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both the Corporation and Contractor. The CEO may execute contract amendments on behalf of Corporation in the following circumstances: a) revisions to attachments regarding the specifics of the program, b) changes in local, state or federal rules and regulations relevant to the program and the implementation of the services set out herein.

XVI. SEVERABILITY

16.1 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.

XVII. LICENSES/CERTIFICATIONS

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

XVIII. COMPLIANCE

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

XIX. NONWAIVER OF PERFORMANCE

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

XX. LAW APPLICABLE & LEGAL FEES

- 20.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 20.2 Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matter in question between Corporation and Contractor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.
- 20.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXI.

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY(SBEDA)

- 21.1 Contractor understands that the Small Business Economic Development Advocacy (SBEDA) requirements contained in the Corporation's RFP/RFQ #21-071; RFX 6100014511, including all exhibits, attachments and addendums thereto (Exhibit A), are made a part of this Agreement and Contractor agrees to comply with such requirements.

XXII. RESERVED

XXIII. LEGAL AUTHORITY

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

XXIV. PARTIES BOUND

- 24.1 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.

XXV. CAPTIONS

25. 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.

XXVI. DEBARMENT

- 26.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.
- 26.2 Contractor shall provide immediate written notice to Corporation, in accordance with Article VIII - Notice, if, at any time during the term of this Agreement, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

XXVII. ENTIRE AGREEMENT

- 27.1 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 XV. Amendments.

[Signatures on Next Page]

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

**SAN ANTONIO EARLY CHILDHOOD
EDUCATION MUNICIPAL
DEVELOPMENT CORPORATION**

**THE DEBERRY GROUP, LLC D/B/A
TALK STRATEGY**

(Signature)

Printed **SARAH BARAY, PH. D.**

Name: _____

Title: **CHIEF EXECUTIVE OFFICER**

Date: _____

Anamaria Suescun-Fast

(Signature)

Printed **ANAMARIA SUESCUN-FAST**

Name: _____

Title: **CEO AND MANAGING
PARTNER**

Date: _____

Attachments:

- Corporation's RFP/RFQ #21-071; RFX 6100014511, including all exhibits, attachments and addendums thereto (Exhibit A);
- Contractor's Price Schedule (Exhibit B); and
- Contractor's Proposal in response to RFP/RFQ #21-071; RFX 6100014511 (Exhibit C).