

AN ORDINANCE 2006-02-02-0151

AUTHORIZING THE EXECUTION OF A CONTRACT WITH KEEP SAN ANTONIO BEAUTIFUL (KSAB) FOR THE CONTINUED SUPPORT OF KSAB FOR THE PERIOD OF FEBRUARY 2, 2006 THROUGH SEPTEMBER 30, 2006; AND AUTHORIZING THE ALLOCATION AND EXPENDITURE OF HUMAN DEVELOPMENT SERVICES FUNDS, AS REQUESTED BY COUNCILMEMBER RICHARD PEREZ, DISTRICT 4.

* * * * *

WHEREAS, the Fiscal Year (FY) 2006 Adopted Budget passed and approved through Ordinance No. 101386 on September 15, 2005 established the City Council Human Development Services Fund (HDSF) to support human development service-related purposes; and

WHEREAS, Ordinance No. 100192, passed and approved on December 16, 2004, authorized the municipal public purposes for HDSF expenditures, including those supporting the health, safety, and welfare of the community; and

WHEREAS, Keep San Antonio Beautiful (KSAB), which is a non-profit community organization and an affiliate of Keep Texas Beautiful and Keep America Beautiful, empowers the citizens of San Antonio to take responsibility for improving their community's environment; and

WHEREAS, KSAB further advocates public awareness by concentrating efforts on educating the public about solid waste issues, litter prevention, graffiti abatement and public stewardship; and

WHEREAS, Councilman Richard Perez has requested that the Mayor and each Councilmember contribute HDSF for the support of KSAB; and

WHEREAS, the public purpose for said expenditure is to promote the health, safety, and welfare of the community; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee, or the Director of the Department of Community Initiatives is authorized to execute a contract with Keep San Antonio Beautiful (KSAB) in the amount of \$ 17,000.00 for the continued support of KSAB projects for the period of February 2, 2006 through September 30, 2006. A copy of said contract, in substantially final form, is attached hereto and incorporated herein as Attachment I.

SECTION 2. Funds for this expenditure are available as part of the FY06 budget as listed below:

Cost Center		GL Account		Amount
7001110001	MAYOR HUMAN DEV SVCS	5201040	Fees to Professional Contractors	\$ 1,000.00
7004010001	DIST 1 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 3,000.00
7004020001	DIST 2 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 1,500.00
7004050001	DIST 5 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 2,000.00
7004060001	DIST 6 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 1,000.00
7004070001	DIST 7 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 1,000.00
7004080001	DIST 8 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 3,000.00
7004090001	DIST 9 HUMAN DEV SER	5201040	Fees to Professional Contractors	\$ 1,500.00
7004100001	DIST 10 HUMAN DEV SE	5201040	Fees to Professional Contractors	\$ 3,000.00
TOTAL				\$ 17,000.00

Payment in the amount of \$ 17,000.00 is authorized to Keep San Antonio Beautiful and should be encumbered with a purchase order. In the event that the contract is amended in accordance with Section 3 of this ordinance, payment is further authorized to Keep San Antonio Beautiful.

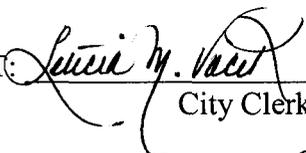
SECTION 3. The City Manager, or her designee, or the Director of the Department of Community Initiatives is authorized to execute contract amendments to the contract, which is attached as Attachment I, when additional monies increase funding to said contract in an amount not exceeding twenty-five percent (25%) of the total contract or \$25,000.00, whichever is the lesser amount, provided the cumulative total of all amendments increasing contract funding during the term of the contract shall not exceed the foregoing amount.

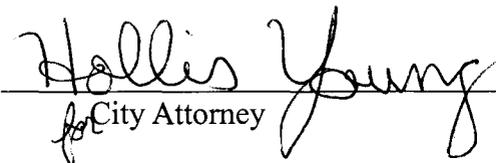
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall become effective on and after February 12, 2006.

PASSED AND APPROVED this 2nd day of February, 2006.


MAYOR
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Voting Results

Name: 7. *Main Motion*

Date: 02/02/06

Time: 11:30:20 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing the execution of a contract with Keep San Antonio Beautiful (KSAB) for the continued support of KSAB for the period February 2, 2006 through September 30, 2006; and authorizing the allocation and expenditure of Human Development Services Funds, as requested by Councilmember Richard Perez, District 4. [Presented by Dennis Campa, Director, Community Initiatives; Frances A. Gonzalez, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4	Not present			
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Agenda Voting Results

Name: 7. AMENDMENT 1 *To add funding from various districts*
Date: 02/02/06
Time: 11:29:45 AM
Vote Type: Multiple selection

Description:

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4	Not present			
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

- 2.3 Final Payment due under the Contract will not be paid until the all work, reports, data, documents and any other unfinished services necessary to complete performance under the Contract have been received, performed and are approved by the CITY, as meeting all the tasks required hereunder in Section 3.1. The CITY shall not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by the CITY.
- 2.4 CITY shall not be obligated or liable under the Contract to any party, other than CONTRACTOR, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.5 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, shall be included in the total costs of the CONTRACT referenced in Section 2.1 of the CONTRACT.

III. SCOPE OF SERVICES

- 3.1 The CONTRACTOR will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the Statement of Work and Budget, attached hereto and incorporated herein as Attachment "A". The CONTRACTOR understands and agrees that Attachment A is a part of the CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the CONTRACTOR as completely and fully are the obligations, conditions, tasks, products, and representations imposed by this CONTRACT.

IV. TERMINATION

- 4.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 4.2 **TERMINATION BY NOTICE:** The CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party. All files are the property of the CITY and, at the CITY'S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 4.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 4.4 **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 CONTRACT shall automatically terminate as of the effective date of such prohibition.

- 4.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONTRACTOR to the CITY or to such person(s) as the CITY may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONTRACTOR'S sole cost and expense.
- 4.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONTRACTOR shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 4.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONTRACTOR'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONTRACTOR shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.8 In the event that through action or no action initiated by the CITY of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of a contract and has no funds to do so from other sources, the contract may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send the CONTRACTOR written notice stating that the CITY of San Antonio failed to appropriate funds.

V. INDEPENDENT CONTRACTOR

- 5.1 It is expressly understood and agreed that the **CONTRACTOR** is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the **CITY** shall in no way be responsible therefor, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 5.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 5.3 Any and all of the employees of the **CONTRACTOR**, wherever located, while engaged in the performance of any work required by the **CITY** under this **CONTRACT** shall be considered employees of the **CONTRACTOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **CONTRACTOR**.

VI. CONFIDENTIALITY

- 6.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by **CONTRACTOR** under this Contract shall be disclosed or made available to any individual or organization by **CONTRACTOR** without the express prior written approval of **CITY**. In the event **CONTRACTOR** receives any such request, **CONTRACTOR** shall forward such request to **CITY** immediately.
- 6.2 **CONTRACTOR** shall establish a method to secure the confidentiality of records and information that **CONTRACTOR** may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting **CITY**'s right of access to records or other information under this **CONTRACT**.

- 6.3 CONTRACTOR shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio CITY Charter, CITY ordinance, rules and regulations.
- 6.4 If the CONTRACTOR receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONTRACTOR shall immediately forward such request to the CITY for disposition.

VII. OWNERSHIP OF DOCUMENTS

- 7.1 In accordance with Texas law, CONTRACTOR acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONTRACTOR pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONTRACTOR.

The term "*local government record*" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 7.2 The CITY shall own the copyright of whatever nature or extent and in all media whatsoever to any documents and records produced through the expenditure of public funds as provided by Section 201.005, Texas Local Government Code. CONTRACTOR and its employees, officers and agents, if any, shall be responsible for furnishing appropriate documentation confirming and/or transferring such copyright ownership in and to the CITY. Provided, however, nothing herein contained is intended nor shall it be construed to require CONTRACTOR to transfer any ownership interest in CONTRACTOR's best practice and benchmarking information to the CITY.

VIII. INTELLECTUAL PROPERTY

- 8.1 CONTRACTOR shall pay all royalties and licensing fees. CONTRACTOR shall hold the CITY harmless and indemnify the 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, 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 CITY.
- 8.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONTRACTOR will immediately:

8.2.1 Either:

- a) obtain, at CONTRACTOR 's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs

and hardware, as the case may be, or,

b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

c) reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

8.2.2 CONTRACTOR further agrees to:

a) assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,

b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

c) indemnify the CITY 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 CITY Attorney of the CITY during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the CITY,
- that the Software or the equipment is used by the CITY 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,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provide CONTRACTOR with written notice within 15 days following the formal assertion of any claim with respect to which the CITY asserts that CONTRACTOR assumes responsibility under this section.

IX. RECORDS

9.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related

responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONTRACTOR.

- 9.2 CONTRACTOR shall deliver all documents to the CITY, no later than 90 days from termination of the Contract, at CONTRACTOR's sole cost and expense.
- 9.3 The CONTRACTOR shall retain all records owned by or to which the CITY has access to, for the retention periods set forth in the Texas Local Government Records Act.
- 9.4 CITY shall be notified immediately by CONTRACTOR of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the Contract. As such, CONTRACTOR understands and agrees that CITY will process and handle all such requests.

X. RIGHT OF REVIEW AND AUDIT

- 10.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this Contract and shall make such materials available to CITY, at CITY's Budget & Performance Assessment Department, 115 Plaza de Armas, San Antonio, Texas, at all reasonable times and as often as CITY may deem necessary during the Contract term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

XI. LICENSES AND CERTIFICATIONS

- 11.1 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated by it 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.

XII. CONFLICT OF INTEREST

- 12.1 CONTRACTOR acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 12.2 Pursuant to section 12.1 of this CONTRACT, CONTRACTOR warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. CONTRACTOR further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY'S Ethics Code.

XIII. INSURANCE

13.1 CONTRACTOR agrees to comply with the following insurance provisions:

- (a) No later than thirty (30) days from the date of execution of this agreement, CONTRACTOR shall furnish an original completed Certificate(s) of Insurance to the CITY's Community Initiatives Department and CITY Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the CITY's Community Initiatives Department and the CITY Clerk's Office, and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement. If the CITY in its sole discretion determines that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit. In such an event, CONTRACTOR shall pay for such audit.
- (b) The CITY reserves the right to review the insurance requirements of this section during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- (c) A CONTRACTOR's financial integrity is of interest to the CITY, 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 Contract, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation*	Statutory
Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
Professional Liability	\$1,000,000
2. Commercial General (public)	
Liability Insurance to include coverage for the following:	
a. Premises/Operations	
b. Independent contractors	For <u>Bodily Injury</u> and
c. Broad Form Contractual Liability	and <u>Property Damage</u> of
d. Products/completed operations	\$1,000,000 per
e. Broad Form Property Damage,	occurrence
to include fire legal liability**	\$2,000,000 general
f. Personal Injury	aggregate or its equivalent
	in umbrella or excess
	liability coverage

3. Business Automobile Liability*

a. Owned/leased vehicles	Combined Single Limit for Bodily
b. Non-owned vehicles	Injury and Property Damage of
c. Hired vehicles	\$1,000,000 per occurrence.

*if applicable

* Worker's Compensation is not required for sole proprietorships, professional corporations and partnerships that employ only one individual to work under this contract. It is generally unnecessary for small businesses (15 or less employees) or contracts where the contractor's employees never enter City premises.

* Professional Liability is required only when the CONTRACTOR makes recommendations to change or directs City policy.

* Business Auto is not required if the company/corporation has no vehicles registered in the company name or if the CONTRACTOR never plans to drive to or in the City on City business.

(d) The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

(e) CONTRACTOR agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name the CITY and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- The CONTRACTOR's insurance shall be deemed primary with respect to any insurance or self insurance carried by the CITY of San Antonio for liability arising out of operations under the contract with the CITY of San Antonio; and
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.

(f) CONTRACTOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

CITY of San Antonio
Community Initiatives Dept.
P.O. Box 839966
San Antonio, TX 78283-3966

CITY of San Antonio
CITY Clerk's Office
P.O. Box 839966
San Antonio, TX 78283-3966

(g) If CONTRACTOR fails to maintain the aforementioned insurance, or fails to secure maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due

under the agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY 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 CITY 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.

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 sub-contractor's performance of the work covered under this agreement.

- (h) It is expressly understood and agreed to by CONTRACTOR that additional insurance (e.g. professional liability, motor truck cargo insurance, payment and performance bonds, builders risk, pollution, a fuel storage tank, environmental, commercial crime/fidelity bond, or other insurance as required by the CITY's Risk Manager) may have to be purchased by the CONTRACTOR if the CITY determines at the time of contract execution that such insurance is applicable.

XIV. INDEMNITY

14.1 **CONTRACTOR 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 CONTRACTOR's activities under this Contract, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, CONTRACTOR or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. 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 promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this Contract and shall see to the investigation of and defense of such claim or demand at CONTRACTOR's cost. The 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.**

14.2 **It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the**

negligent act of the CITY is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

XV. AMENDMENT

- 15.1 This Contract, together with its authorizing ordinance and attachments, if any, shall constitute the full and final agreement between the parties hereto.
- 15.2 Except where the terms of this Contract expressly provide otherwise, any amendment to this Contract shall not be binding on the parties unless such amendment be in writing, executed by both CITY and CONTRACTOR and dated subsequent to the date hereof.
- 15.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The CONTRACTOR expressly agrees to comply with all applicable federal, state, and local laws.

XVI. NOTICE

- 16.1 Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONTRACTOR at the respective address set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Attn: Dennis J. Campa, Director
Department of Community Initiatives
115 Plaza de Armas, Suite 210
San Antonio, Texas 78205

CONTRACTOR

Keep San Antonio Beautiful
1940 Grandstand
San Antonio, Texas 78238
(210) 207-6460

XVII. LEGAL AUTHORITY

- 17.1 The person signing on behalf of CONTRACTOR represents and warrants and certifies that he has full legal authority to execute this Contract on behalf of CONTRACTOR and has authority to bind CONTRACTOR to all the terms, conditions, provisions and obligations contained herein.

XVIII. SUBCONTRACTING AND ASSIGNING INTEREST

- 18.1 Any subcontracts or assignments on interests entered into by CONTRACTOR concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT's effective date. CONTRACTOR shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY, evidenced by passage of an ordinance to that effect by the San Antonio CITY Council. Any such

attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should **CONTRACTOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **CONTRACTOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this CONTRACT. The violation of this provision by **CONTRACTOR** shall in no event release **CONTRACTOR** from any obligation under the terms of this CONTRACT, nor shall it relieve or release **CONTRACTOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

- 18.2 **CONTRACTOR's** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **CONTRACTOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. **CONTRACTOR** shall indicate this limitation in all contracts with approved subcontractors.
- 18.3 **CONTRACTOR** agrees to notify **CITY** any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.
- 18.4 In no event shall such written consent, if obtained, relieve **CONTRACTOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 18.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIX. SUCCESSORS AND ASSIGNS

- 19.1 This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, **CONTRACTOR** may not assign this Contract without prior written consent of **CITY** in accordance with Section XVIII hereof.

XX. NON WAIVER

- 20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the **CONTRACTOR** from any covenants and conditions required in this CONTRACT.

XXI. COMPLIANCE

- 21.1 **CONTRACTOR** shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 21.2 The **CONTRACTOR** certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the **CONTRACTOR** to suspension of payments, termination of Contract, and debarment and suspension actions.

- 21.3 CONTRACTOR shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONTRACTOR agrees to abide by all applicable provisions of San Antonio CITY ordinance number 69403 on file in the CITY Clerk's Office. Additionally, CONTRACTOR certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing those laws.
- 21.4 The funding level of this contract is based on an allocation to the Department of Community Initiatives by the City of San Antonio. The allocation is based on an appropriation for the Department of Community Initiatives receipt of funds through the General Fund. The budget to this contract may be adjusted to correspond to the actual allocation. In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

XXII. VENUE AND GOVERNING LAW

- 22.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

XXIII. SEVERABILITY

- 23.1 If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future laws during the term of this Contract, including any extension and renewal hereof, it is the intention of the parties hereto that the remainder of the Contract shall not be affected thereby, and that in lieu of each clause or provision of the Contract that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the Contract.

XXIV. GENDER

- 24.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

- 25.1 The captions contained in this Contract are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this Contract.

XXVI. ENTIRE AGREEMENT

26.1 This Contract, together with its authorizing ordinance and attachments, if any, embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract. No other agreements, oral or otherwise regarding the matters of this Contract shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

EXECUTED this the _____ day of _____, _____.

CITY

CONTRACTOR

CITY of San Antonio, Texas

Dennis J. Campa, Director
Department of Community Initiatives

Bud Little
President

APPROVED AS TO FORM:

Assistant CITY Attorney

**Statement of Work and Budget
Keep San Antonio Beautiful (KSAB)**

Attachment A

CONTRACTOR agrees to abide by the following provisions and provide the following services:

1. Develop and deliver a consistent, persuasive message to citizens of all ages, to include:
 - a. Environmental education components provided to children, including:
 - i. Don't Mess With Texas
 - ii. Recycling and brush up collection
 - iii. Reduce, Reuse, Rethink concepts
 - b. Citizens' awareness of environmentally friendly, smart programs and available services
 - c. Citizens' knowledge regarding the use of programs and services, including:
 - i. Dial-a-Trailer Program as an easy and convenient way to dispose of items not accepted by regular recycling or brush/bulky item collection
 - ii. Options for residents missing a pick-up
 - iii. Adopt-a-Spot Litter Clean Up Program to beautify neighborhoods and/or business lots
 - d. Citizens' alertness to changes in programs' guidelines in compliance with the City
 - i. Curbside Recycling Collection Program
 - ii. Brush and Bulky Items Collection Program
 - e. Citizens', community and business organizations' knowledge of KSAB, including how to:
 - i. Get information
 - ii. Reserve a Dial-a-Trailer
 - iii. Adopt-a-Spot
 - iv. Have a "No Dumping" sign placed on their street
 - v. Order a recycling bin
 - vi. Schedule environment education presentations at schools or neighborhood association meetings
 - vii. Volunteer to fulfill community service/philanthropic hours
 - f. Government regulators knowledge and levels of support for KSAB.

Budget: Attached hereto and incorporated herein as Exhibit I.

Keep San Antonio Beautiful
PROPOSED BUDGET SUMMARY
 FY 2005-2006

PERSONNEL

Salaries	\$14,000.00
FICA	0.00
Worker's Compensation	0.00
Insurance (Unemployment)	0.00
Retirement	0.00
Other (Health Insurance)	0.00
TOTAL PERSONNEL	\$14,000.00

OPERATIONS

Communications	0.00
Mail & parcel Post	0.00
Rental of Facilities	0.00
Rental of Equipment	0.00
Official Travel	0.00
Maintenance/Repair: Buildings	0.00
Maintenance/Repair: Machines & Equipment	0.00
Utilities	0.00
Fees to Professional Contractors	0.00
Legal Services	0.00
Automatic Data Processing	0.00
Advertising	0.00
Membership Dues	0.00
Binding, Printing & Reproduction	0.00
Subscriptions to Publications	0.00
Office Supplies	0.00
Mileage	\$750.00
Photographic Supplies	0.00
Motor Fuel & Lubricants	0.00
Insurance	0.00
Bonding	0.00
Program Supplies	0.00
TOTAL OPERATIONS	\$750.00

TOTAL BUDGET	\$14,750.00
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