LB
04/06/06
Item #25

AN ORDINANCE 2006-04-06-0443

AUTHORIZING THE ACCEPTANCE OF A SPECIAL INITIATIVES/DISASTER RELIEF GRANT FROM THE TEXAS COMMISSION FOR THE ARTS IN THE AMOUNT OF $5,000.00 AND APPROPRIATING SUCH FUNDS, TOGETHER WITH A $5,000.00 MATCH FROM THE OFFICE OF CULTURAL AFFAIRS, TO SUPPORT LOCAL ARTS YOUTH PROGRAMS PRODUCED BY ARTS TEACH (ARTS SAN ANTONIO) AND HEALING ARTS (BOYS & GIRLS CLUB).

* * * * *

WHEREAS, due to the disastrous effects of Hurricanes Katrina and Rita, and the influx of displaced persons to Texas, the National Endowment for the Arts provided the Texas Commission on the Arts ("TCA") with disaster relief funds intended to help agencies better serve the displaced populations living in Texas; and

WHEREAS, since San Antonio has become home for many Gulf region residents, the Office of Cultural Affairs ("OCA") applied and was awarded this grant to help two local agencies collaborate to produce programs for youth in school districts with a large population of former Gulf Coast residents and the funds will support and implement a collaborative arts program between Arts Teach (Arts San Antonio) and The Healing Arts (Boys & Girls Club) to educate and help children and youth displaced by the hurricanes to cope with their unique circumstances through therapeutic arts; and

WHEREAS, the TCA grant is for a sum of $5,000.00 and requires a $5,000.00 match by OCA to be appropriated from OCA's budget; **NOW THEREFORE:**

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

SECTION 1. The acceptance of a special initiatives/disaster relief grant from the Texas Commission for the Arts in the amount of $5,000.00 is approved and the funds, together with a $5,000.00 match from the Office of Cultural Affairs are authorized to be appropriated to support local arts youth programs produced by Arts Teach (Arts San Antonio) and Healing Arts (Boys & Girls Club).

SECTION 2. The City Manager, or her designee, is authorized to execute Arts Funding Agreements with Arts Teach and Healing Arts in the amount of $5,000.00 each. A draft of such an Agreement, in substantially final form, is attached to this Ordinance as Exhibit A.

LB
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Item #25

SECTION 3. Fund No. 26-005000, Internal Order No. 128000000010, entitled "National Endowment for the Arts/TCA" is designated for use in accounting for said grant and the sum of $5,000 is appropriated in said Fund.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, 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 SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 6th day of April, 2006.

M A Y O R

PHIL HARDBERGER

ATTEST:

City Clerk

APPROVED AS TO FORM: _____

for City Attorney

Exhibit
A

STATE OF TEXAS *

COUNTY OF BEXAR * **DELEGATE AGENCY CONTRACT WITH (Name of Contractor)**

CITY OF SAN ANTONIO *

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and the (agency name), (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Office of Cultural Affairs is designated as the managing City department (hereinafter referred to as "Managing City Department") for the City; and

WHEREAS, the City has provided certain funds from a grant from the Texas Commission for the Arts; and

WHEREAS, the City has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for a project entitled ***(project/program name)*** (hereinafter referred to as "the Project"); and

WHEREAS, the City wishes to engage the Contractor to carry out the Project; NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

1.1 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 Program Statement, Budget and Performance Measures, affixed hereto and incorporated herein for all purposes as Attachment I.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on _____ and shall terminate on _____.

2.2 The Contractor understands that this Contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.

III. CONSIDERATION

3.1 In consideration, the City will reimburse Contractor for expenses incurred in accordance with the budget approved by City Council in Ordinance No. _____. Said budget is part of Attachment I to this Contract. It is specifically agreed that reimbursement hereunder shall not exceed the amount of $_____.

3.2 The funding level of this Contract is based on the allocation awarded to the Managing City Department by the City of San Antonio. The allocation is based on an appropriation for the ***(enter name of project/program)*** and Managing City Department's receipt of said allocation. The budget to this Contract may be adjusted to correspond to the actual allocation awarded.

3.3 Consequently, Contractor agrees to comply with the Special Provisions affixed hereto and incorporated herein for all purposes as Attachment II.

IV. PAYMENT

4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of City-funded services provided by the Contractor in accordance with the terms of this Contract. Allowable costs are defined as those costs which are necessary, reasonable and allowable under applicable Federal, State, and local law, for the proper administration and performance of the services to be provided under an agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in Attachment I of this Contract. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of the Managing City Department a written request for such advance payment, including the specific reason for such request. The Director of the Managing City Department may, in his sole discretion, approve an advance payment on this Contract. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the Managing City Department no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director of the Managing City Department on a case-by-case basis, (b) the decision by the Director of the Managing City Department whether or not to approve an advance payment is final and (c) all payments hereunder made to Contractor not specifically authorized by the Director of the Managing City Department to be advance payments in accordance with the provisions of this paragraph are made on a cost reimbursement basis. For purposes of this Contract, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. In those instances in which advance payments are authorized:

(A) Funds received from the City by the Contractor in advance for payments to vendors shall be remitted to the vendors in a prompt and timely manner, defined as not later than ten (10) calendar days after the Contractor is notified that a check is available from the City.

(B) The Contractor must deposit City funds in a separate account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposits in said bank, including all City funds deposited in such separate account, exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that causes the Contractor's account balance to exceed $100,000.00 shall be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.

4.2 Contractor agrees that reimbursements of eligible expenses shall be made monthly or bi-weekly, as determined by the Director of the Managing City Department according to standard procedures followed by the City's Finance Department. The Director of the Managing City Department may require the Contractor's submission of original or certified copies of invoices, cancelled checks, and/or receipts to verify invoiced expenses.

4.3 Contractor agrees that all requests for reimbursement shall be accompanied with documentation as may be required by the Director of the Managing City Department.

4.4 The Contractor shall submit to City all final requests for payment no later than thirty (30) days from the termination date of this Contract, unless Contractor receives written authorization from the Director of the Managing City Department prior to such thirty (30) day period allowing Contractor to submit a request for payment after such thirty (30) day period.

4.5 Contractor agrees that the City shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the Contractor).

4.6 Contractor shall maintain a financial management system, and acceptable accounting records that provide for:

(A) accurate, current, and complete disclosure of financial support from each Federal, State and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII. of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;

(B) records that adequately identify the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;

(C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain a separate numbered account for all funds received and disbursed through this Contract;

(D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;

(E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;

(F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, and the terms of the award, grant, or contract, with the City;

(G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Contractor shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project/Projects. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.7 Contractor agrees that Contractor costs or earnings claimed under this Contract will not be claimed under another contract or grant from another agency.

4.8 Contractor shall establish and utilize a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the project or projects funded by this Contract. The Cost Allocation Plan and supportive documentation shall be included in the audit that is applicable to the Contractor's Project. The Cost Allocation Plan is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the program.

4.9 Upon completion or termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by Contractor to the City.

4.10 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may

review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

V. PROGRAM INCOME

5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and payments from clients or third parties for services rendered by Contractor pursuant to this Contract. Contractor shall be permitted to retain such funds to be:

(A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or

(B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.

5.2 Contractor shall provide the Managing City Department with thirty (30) days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.

5.3 The Contractor shall fully disclose and be accountable to the City for all program income. Contractor must submit a statement of expenditures and revenues to the Managing City Department within thirty (30) days of the activity that generates program income. The statement is subject to audit verification by Managing City Department. Failure by Contractor to report program income as required is grounds for suspension, cancellation, or termination of this Contract.

5.4 Contractor is prohibited from charging fees or soliciting donations from participants in any City-funded project without the prior written approval of the Director of the Managing City Department.

5.5 Contractor shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT.

6.1 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, the City Manager, as representative of the City, 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.

6.2 Contractor shall not use funds awarded from this Contract as matching funds for any Federal, State or local grant without the prior written approval of the Director of the Managing City Department.

6.3 The City shall have the authority during normal business hours to make physical inspections to the operating facility occupied to administer this Contract and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

6.4 Contractor shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures shall specify the consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution

where necessary. Said procedures shall be provided to Managing City Department upon request by the Managing City Department.

6.5 Contractor agrees to comply with the following check procedures:

(A) No blank checks are to be signed in advance;

(B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a $100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement shall not exceed $200.00 for any given calendar month during the term of this Contract unless Contractor receives prior written approval from the Managing City Department to exceed such limit. Such requests for petty cash must be supported by the submission to the Managing City Department of an original receipt.

(C) Checks issued by City to Contractor shall be deposited into the appropriate bank account no later than three (3) business days of Contractor's receipt of each such check, and shall never be cashed for purposes of receiving the face amount back. If such check(s) are not cashed within sixty (60) days from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. Upon cancellation of any outstanding check, if deemed appropriate by City, such check may be reissued to the Contractor or if deemed by City not to be a valid expense, such check shall be immediately returned to the City.

6.6 City reserves the right to request Contractor to provide additional records for long distance calls, faxes and/or cell phone calls charged to the City.

VII. AUDIT

7.1 If Contractor expends $250,000.00 or more of City dollars, then during the term of this Contract, the Contractor shall have completed an independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish the Managing City Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to Contractor in Article III, Section 3.1 of this Contract is $250,000.00 or more, then the Contractor further agrees to provide a line item in its budget for a financial statement audit prepared by an independent certified public accountant. If the City determines, in its sole discretion, 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 and to have the Contractor pay for such audit from non-City resources. If Contractor expends less than $250,000.00 of City dollars, then during the term of this Contract, the Contactor shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of Contractor's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.

In addition, if the Contractor has expended federal funds received through the City that exceed the Single Audit threshold amount in effect during the period of this Contract, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular A-133 revision).

Contractor understands that all Contractors expending $500,000.00 or greater of federal funds must comply with the Office of Management and Budget (OMB A-133), or $500,000.00 or greater of state funds must comply with the State of Texas Single Audit Circular. Federal funds expended include pass-through of federal funds from the City, pass-through of federal funds from other grantors, and direct federal funds. An independent certified public accountant (CPA) must conduct the Single Audit and it must be completed within ninety (90) days after the Contractor's fiscal year ends, and a copy of the report is required to be furnished by Contractor to the Managing City Department within fifteen (15) days after the report is

issued. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, management letter and/or conduct of audit letter are to be submitted to the Managing City Department by Contractor within fifteen (15) days upon receipt of said report.

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the Contractor or its programs of any findings about ~~of~~ accounting deficiencies, or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to the Managing City Department within a period of ten (10) days upon the Contractor's receipt of the report.

7.2 Contractor understands and agrees that if Contractor receives more than $500,000.00 in federal funds from the City Contractor shall submit copies of its annual independent audit report, and all related reports issued by the independent certified public accountant within a period not to exceed one hundred twenty (120) days after the end of contractor's fiscal year to the Federal Audit Clearinghouse in Jeffersonville, Indiana. Contractor may submit reports through the following website: http://gov.fac@census.gov and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice), 1 (888) 222-9907 (toll free) or 1 (800) 253-0606.

Upon completion of Form SF-SAC, Contractor may submit the completed report by mail to:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, Indiana 47132

7.3 The audited financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City and a certification from the Contractor stating whether or not the terms and conditions of the Contract were met.

The City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Contract at any and all times deemed necessary by City. The City audit staff, a Certified Public Accounting (CPA) firm, or other auditors as designated by the City, may perform such audit(s). The City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

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

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

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

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will immediately refund such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, the Managing City Department may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by cashiers check or money order. If Managing City Department elects to deduct such claims from subsequent reimbursements, during such time, the Contractor is forbidden to reduce Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses associated with the collection of delinquent debts owed by Contractor shall be the sole responsibility of the Contractor and shall not be paid from any Project funds received by the Contractor under this Contract.

VIII. RECORDS, REPORTING, AND COPYRIGHTS

8.1 The Managing City Department is assigned monitoring, fiscal control, and evaluation of projects. Therefore, at such times and in such form as may be required by the Managing City Department, the Contractor shall furnish to the Managing City Department and the Grantor of the grant funds, if applicable, such statements, records, data, and information and permit the City and Grantor of the grant funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract.

8.2 The Contractor shall submit to the Managing City Department such reports as may be required by the City, including the Monthly Operating Agency Report Form, which is affixed hereto and incorporated herein as Attachment III. Said report is to be submitted to the Managing City Department no later than the twentieth (20th) day of month following the month in which the reported activities occurred.

8.3 Contractor agrees to maintain in confidence all information pertaining to the Project/Projects or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of the Managing City Department prior written notice that such disclosure is required with a full and complete description regarding such requirement. Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.3, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information. This Article VIII, Section 8.3 shall not be construed to limit the City's or its authorized representatives' right of access to records or other information, confidential or otherwise, under this Contract. Upon termination of this Contract, Contractor shall return to City all copies of materials related to the Project/Projects, including the Confidential Information.

8.4 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Contractor receives inquiries regarding documents within its possession pursuant to this Contract, Contractor shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. If the requested information is confidential pursuant to State or Federal law, the Contractor shall submit to City

the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.

8.5 In accordance with Texas law, Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director of the Managing City Department, unless required to do so by a court of competent jurisdiction. The Managing City Department shall be notified of such request as set forth in Article VIII., Section 8.3 of this Contract.

8.6 Ownership of Intellectual Property. Contractor and City agree that the Project/Projects shall be and remain the sole and exclusive proprietary property of City. The Project/Projects shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project/Projects and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project/Projects and the tangible and intangible property rights relating to or arising out of the Project/Projects, including, without limitation, any and all copyright, patent and trade secret rights. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in the Project/Projects shall be solely vested in City. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project/Projects, including without limitation, any letters patent, copyright, or other protection relating to the Project/Projects, for any reason whatsoever, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. 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.

8.7 Within a period not to exceed thirty (30) days from the termination date of the Contract, Contractor shall submit all final client and/or fiscal reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.

8.8 Contractor shall provide to the Managing City Department all information requested by the Managing City Department relating to the Contractor's Board functions. Information that may be required for submission shall include, but may not be limited to:

(A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
(B) Current Bylaws and Charter;
(C) Terms of Officers;
(D) Amendments to Bylaws;

(E) Schedule of anticipated board meetings for current Fiscal Year;
(F) Minutes of board meetings that are approved by the Contractors board will become part of the Contractors project records and as such, must be available to City staff, upon request, provided however, the Contractor's shall submit to the City minutes of board meetings that are approved by the Contractor's Board on a quarterly basis for contracts with the City that are in an amount of $1,000,000.00 or greater.
(G) Board Agenda, to be submitted at least three (3) business days prior to each Board meeting.

8.9 Contractor agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto, referenced in section 12.3 of this Contract.

IX. INSURANCE

9.1 Contractor agrees to comply with the following insurance provisions:

(A) Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the Managing City Department and City Clerk's Office. Said Certificate(s) 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 Certificate will identify this Contract by name or reference this Contract. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed, transmitted or conveyed 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 properly delivered to the Managing City Department and the City Clerk's Office. No officer or employee of the City 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 Article before or during the effective period of the Contract and any extension or renewal hereof and to reasonably require modification or amendment to the insurance coverages, limits and endorsements attached thereto, when deemed necessary and prudent by the City's Risk Manager. Such modifications or amendments will be made solely for the purpose of addressing changes in statutory law, court decisions, or circumstances surrounding this Contract.

(C) Contractor's financial integrity is of interest to City. Contractor shall have the right to maintain reasonable deductibles in such amounts as are approved by 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 B- or better by A.M. Best Company and/or otherwise approved by City's Risk Manager in the following types and amounts:

Policy Types*	Amount
1. Worker's Compensation	_____
Employer's Liability	$_____
2. Commercial General Liability	$_____
	$_____
	_____
3. Crime Coverage theft, employee dishonesty	_____
	_____
4. Liquor Legal Liability	$_____
5. Business Auto	$_____

6. Professional Liability $_____

7. Builder's Risk _____
_____

8. Environmental Impact Liability _____
_____

*if applicable as determined by the City's Risk Manager

(D) The City shall be entitled, upon request and without expense, to review copies of any and all policies, including current and past declaration pages, schedules 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 every reasonable effort to accomplish such changes in policy coverages, 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 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;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- 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.
- 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 addresses:

City of San Antonio
Office of Cultural Affairs
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

(G) If Contractor fails to maintain the insurance required under this Contract, or fails to secure and 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 this Contract. Procuring of said insurance by the City, however, is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsements. 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 or its subcontractors' performance of the work covered under this Contract.

(H) It is expressly understood and agreed to by Contractor that additional insurance (e.g. liquor legal liability, professional liability, motor truck cargo insurance, payment and performance bonds, builders risk, pollution, a fuel storage tank, environmental, commercial crime/fidelity bond, theft, employee dishonesty 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 or during the term of the Contract, that such insurance is applicable.

X. INDEMNITY

10.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

(A) 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, consultant 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.

(B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article 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 Article 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.

XI. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

11.1 Contractor agrees to comply with the following Small, Minority or Woman-owned Business Advocacy Policy:

(A) Contractor is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Contractor agrees that Contractor will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Contractor further agrees that Contractor will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Minority or Woman-owned Business Advocacy Policy and City's Equal Opportunity Affirmative Action policy, these policies being available in City's Department of Economic Development, and the City Clerk's Office.

(B) If the amount of funds to be paid to Contractor in Article III., section 3.1 of this Contract is for $200,000.00 or more, then the Contractor agrees to submit to the City a Good Faith Effort Plan ("GFEP") indicating Contractor's utilization of Small, Minority and Woman-owned Business Enterprises no later than fifteen (15) days from the date of execution of this Contract. If City approves the GFEP, and the City subsequently finds material deficiencies in any aspect of the GFEP, Contractor will be required to submit a written report to City's Department of Economic Development. The Contractor will also be required to submit a supplemental Good Faith Effort Plan indicating efforts to resolve any deficiencies. A denied Supplemental Good Faith Effort Plan, by the City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by the Contractor. Failure to obtain an approved Supplemental Good Faith Effort Plan, within ninety (90) days of initial denial shall constitute a default and result in penalty on the Contractor of $1,000.00 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitute a further (additional) condition of default by the Contractor and which can, at the option of the Director of the Managing City Department, result in forfeiture of the entirety of this Contract.

XII. APPLICABLE LAWS

12.1 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.

12.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City and/or by Federal, State, or other granting entities. Consequently, Contractor agrees to comply with all laws, rules, regulations, policies, and procedures applicable to the funds received by Contractor hereunder as directed by the City or as required in this Contract. In addition Contractor shall comply with the following Office of Management and Budget (OMB) Circulars, as applicable to the funds received by Contractor hereunder:

(A) OMB Circular A-21, entitled, "Cost Principles for Educational Institutions";
(B) OMB Circular A-87, entitled, "Cost Principles for State, Local and Indian Tribal Governments";
(C) OMB Circular A-102, entitled, "Grants and Cooperative Agreements with State and Local Governments";
(D) OMB Circular A-122, entitled, "Cost Principles for Non-Profit Organizations"; and
(E) OMB Circular A-133, entitled, "Audits of States, Local Governments, and Not for Profit Organizations".

12.3 All of the work performed under this Contract by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar. Additionally, Contractor shall comply with the following:

- Local Government Records Act of 1989 official record retention schedules found at http://www.tsl.state.tx.us/slrm/recordspubs/gr.html
- Texas Government Code Chapter 552 pertaining to Texas Public Information Act
- Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities
- Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services
- Texas Local Government Code can be found at http://www.capitol.state.tx.us/statutes/go/go0055200toc.html

In addition to the applicable laws referenced above, Contractor must also adhere to compliance requirements that are applicable to the specific funding source(s) from which funds paid to Contractor hereunder originated. For example, CDBG Contractors are required to follow applicable CDBG regulations.

12.4 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, minimum wage and equal opportunity provisions, including but not limited to:
Title VII of the Civil Rights Act of 1964, as amended;
(A) Section 504 of the Rehabilitation Act of 1973, as amended;
(B) The Age Discrimination Act of 1975, as amended;
(C) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
(D) Fair Labor Standards Act of 1938, as amended;
(E) Equal Pay Act of 1963, P.L. 88-38; and
(F) All applicable regulations implementing the above laws.

12.5 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to:
(A) worker's compensation;
(B) unemployment insurance;
(C) timely deposits of payroll deductions;
(D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
(E) Occupational Safety and Health Act regulations; and
(F) Employee Retirement Income Security Act of 1974, P.L. 93-406.

12.6 Contractor agrees to comply with the Americans with Disabilities Act P.L. 101-336, enacted July 26, 1990, and all regulations thereunder.

12.7 Contractor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.

12.8 All expenditures by the Contractor or any of its subcontractors exceeding $25,000.00 must be pre-approved in writing by the Managing City Department. Furthermore, all expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations including all bidding requirements that City would be required to perform under Chapter 252 of the Texas Local Government Code which include groups of separate, sequential or component purchases, as such terms are defined in Section 252.001 of the Texas Local Government Code, exceeding a total cost of $3,000.00 set forth in this section.

12.9 Contractor shall submit to the Managing City Department on an annual basis form 990 or 990T.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

13.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

13.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

13.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

13.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

(A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or

(B) Have any direct or indirect interest in this Contract or the proceeds thereof.

13.5 Contractor acknowledges that it is informed that 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 "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 subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, (that neither the Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. If Contractor is a business entity, the Contractor representative further warrants and certifies that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee 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). Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. TERMINATION

14.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if this Contractor should violate any of the covenants, conditions, or stipulations of the Contract, the City shall thereupon have the right to terminate this Contract by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.

14.2 Termination for Convenience - This Contract may be terminated in whole or in part when the City determines that continuation of the Project or Projects would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. The Contractor shall also have the right to terminate this Contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.

14.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.

14.4 If an employee of the Contractor is discharged or otherwise leaves employment with Contractor, then, in accordance with Article XII, Section 12.2 of this Contract, the Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified in Chapter 61 of the Texas Labor Code. Upon the expiration of four (4) years from the end of said timeframe, Contractor must thereafter return to the City any remaining funds received from the City for salaries and wages. Such funds to be returned shall be classified as "disallowed costs" and refunded by Contractor in accordance with Article VII., Section 7.3 of this Contract. The obligations of Contractor to return such funds to the City in accordance with this paragraph, however, shall be subject to compliance by Contractor of all applicable Texas Unclaimed Property laws.

XV. PROHIBITION OF POLITICAL ACTIVITIES

15.1 Contractor agrees that no funds provided from or through the City shall be contributed or used to conduct political activities, including political activities for the benefit of any candidate for elective public office, political party, organization or measure, whether partisan or non-partisan, nor shall the personnel involved in the administration of the project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.

15.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

15.3 The prohibitions set forth in Article XV., sections 15.1 and 15.2 of this Contract include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;

(C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

15.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to the Managing City Department. Contractor shall list the name and number of a contact person from the Managing City Department on the statement that Contractor's personnel can call to report said violations.

15.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the Contractor's personnel is terminated.

15.6 This Article shall not be construed to prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

XVI. PERSONNEL MANAGEMENT

16.1 The Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.

16.2 Contractor is permitted to pay its full time employees for the total number of holidays authorized by the City Council for City employees. If the Contractor elects to observe more than the total number of holidays, authorized by the City Council for City employees, then such additional days are not eligible for reimbursement under this Contract.

16.3 Contractor agrees that the job titles and descriptions set forth in the budget (Attachment I) that affect a salary or range increase may not be changed without justification and prior written approval from the City, as evidenced through a written amendment to this Contract approved by the Director of the Managing City Department.

16.4 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.

16.5 The Contractor agrees to provide the City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.

16.6 At the sole discretion of the Director of the Managing City Department, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:

(A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;

(B) To serve as a juror;

(C) To attend the funeral of someone in the immediate family. Immediate family shall include father, mother, sister, brother, husband, wife or child, and other relatives, (including in-laws) if such other relatives are actually members of the employee's household. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or

(D) To attend seminars or workshops;

16.7 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through City funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

XVII. ADVERSARIAL PROCEEDINGS

17.1 Contractor agrees to comply with the following special provisions:

(A) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and

(B) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XVIII. CITY-SUPPORTED PROJECT

18.1 Contractor shall publicly acknowledge that this Project is supported by the City as directed by the Managing City Department.

XIX. EQUIPMENT

19.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at Contract's termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Contract. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds. It is understood that the terms, "equipment" and "property", as used herein, shall include not only furniture and other durable property, but also vehicles.

19.2 Contractor agrees that no equipment purchased with City funds may be disposed of without receiving prior written approval from the Managing City Department. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with City funds.

19.3 Contractor shall maintain records on all items obtained with City funds to include:
(A) A description of the equipment, including the model and serial number, if applicable;
(B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
(C) An indication of whether the equipment is new or used;
(D) The vendor's name (or transferred from);
(E) The location of the property;
(F) The property number shown on the property tag; and,
(G) A list of disposed items and disposition

19.4 The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the Managing City Department within seventy-two (72) hours from the date that Contractor discovers the lost, stolen, missing, damaged and/or destroyed equipment/property.

19.5 The report submitted by the Contractor to the Managing City Department shall minimally include:

(A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
(B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
(C) A copy of the official written police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

19.6 All equipment purchased under this Contract shall be fully insured against fire, loss and theft.

19.7 The Contractor shall provide an annual inventory of assets to the Managing City Department. Contractor shall report to the Managing City Department any changes monthly including destruction, theft, disappearance, etc.

XX.

Article intentionally left blank

XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

21.1 Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXII.

Article intentionally left blank

XXIII. ASSIGNMENT

23.1 Contractor shall not assign or transfer Contractor's interest in this Contract or any portion thereof without the approval of the City Council of San Antonio, evidenced by passage of a subsequent ordinance, and if applicable, the Grantor of the grant source. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XXIV. AMENDMENT

24.1.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing City Department shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio, if permitted by all applicable local, state and federal laws in the following circumstances:

A. an increase in funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) $25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing Contract funding during the term of this Contract shall not exceed the foregoing amount;

B. modifications to the Performance Measures set forth in Attachment I hereto, so long as the terms of the amendment stay within the parameters set forth in the Program Statement, also set forth in Attachment I hereto;

C. budget line item shifts of funds, so long as the total dollar amount of the budget set forth in section 3.1 of this Contract remains unchanged; provided, however, that budget line item shifts of funds related to personnel services cannot exceed the total dollar amount allocated to personnel services set forth in the budget (Attachment I) of this Contract;

D. modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department.

XXV. SUBCONTRACTING

25.1 Any subcontracting of the services covered by this Contract shall be approved by City of San Antonio City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

25.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, 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 City Council.

XXVI. OFFICIAL COMMUNICATIONS

26.1 For purposes of this Contract, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City:
City of San Antonio
Office of Cultural Affairs
P.O. Box 839966
San Antonio, Texas 78283-3966

Contractor:

_____

_____

_____

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

XXVII. VENUE

27.1 Contractor and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Contract or adjudicate any dispute arising out of this Contract shall be bought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXVIII. GENDER

28.1 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.

XXIX. AUTHORITY

29.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor shall provide evidence to City upon execution of this Contract that it is currently operating as a non-profit entity with a current Internal Revenue Code section 501(c)(3) status, or a for-profit entity governed by an autonomous governing body, acting in accordance with the governing instruments submitted to the City in the application for funding. Whether a non-profit or for-profit entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide Managing City Department verification of the foregoing requirements no later than the execution date of this Contract.

XXX. LICENSES AND TRAINING

30.1 Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide said services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXXI. INDEPENDENT CONTRACTOR

31.1 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 therefore, 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.

31.2 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.

31.3 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.

XXXII. SEVERABILITY

32.1 If any clause or provision of this Contract 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 City, 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 Contract 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 Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract 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.

XXXIII. CONTRIBUTION PROHIBITIONS

The provisions of Article XXXIII shall apply to all contracts considered "high risk" as that term is defined in the City of San Antonio Contracting Policy and Process Manual.

33.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-risk" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 Calendar days following the contract award. Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response

33.2 Contractor acknowledges that the City has identified this Contract as high risk.

33.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXXIV. ENTIRE CONTRACT

34.1 This Contract and its attachments, if any, constitute the entire and integrated Contract between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

In witness of which this Contract has been executed effective the _____ day of _____, _____.

CITY OF SAN ANTONIO:

_____

Felix Padrón
Executive Director
Office of Cultural Affairs

APPROVED BY:

_____

Sheryl Sculley
City Manager

APPROVED AS TO FORM:

_____

City Attorney

CONTRACTING AGENCY:

(enter name of agency)

(address)

San Antonio, TX (zip code)

_____

Executive Director

_____

Board President (if required by Agency)

ATTACHMENTS

Attachment I – Program Statement, Budget and Performance Measures
Attachment II – Special Provisions
Attachment III – Monthly Operating Agency Report Form