



City of San Antonio
Department of Planning & Community Development
Division of Grants Monitoring and Administration

**REQUEST FOR APPLICATIONS
("RFA")**

for

CHDO Operating Expense Funding

Release Date: June 19, 2015

Applications Due: July 17, 2015

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking City Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation had been released until 30 calendar days after the contract has been awarded ("black out" period):

1. legal signatory of a high-profile contract;
2. any individual seeking a high-profile contract;
3. any owner or officer of an entity seeking a high-profile contract;
4. the spouse of any of these individuals;
5. any attorney, lobbyist, or consultant retained to assist in seeking contract.

A contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.

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003. – HOME PROGRAM REQUIREMENTS

The City of San Antonio's, Department of Planning and Community Development – Division of Grants Monitoring and Administration (the "City") is seeking applications from local non-profit affordable housing providers requesting HOME Investment Partnership Program (HOME) funding for eligible operating expenses. Respondents must meet the Community Housing Development Organization (CHDO) Certification requirements as described in the 2013 HOME Final Rule.

The City allocated \$140,750 in HOME Investment Partnership Funding specifically for CHDO Operating Expenses in the FY 2015 and FY 2016 Annual Action Plan Budget.

The City's CHDO Operating Expense Program is designed to provide operating funds to Community Housing Development Organizations based on financial need and the expectation that the organization is utilizing or will utilize the City's HOME CHDO development funding within 24 months of the award.

HOME funding provided for CHDO operating expenses may not exceed \$50,000 or 50% of the organization's total annual operating expenses for that fiscal year, whichever is greater. CHDO operating expense funds may not supplant CHDO set-aside funds for project costs.

Eligible Respondents

The respondent must be a private non-profit, community-based service organization whose primary purpose is to provide and develop decent, affordable housing for the community it serves. Additional requirements include the following:

1. The Respondent must be organized under state and local laws;
2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
3. Is neither controlled by, nor under the director or, individuals or entities seeking to derive profit or gain from the organization;
4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986
5. Is not a governmental entity
6. Has standards of financial accountability that conform to 24 CFR 84.21 "Standards for Financial Systems;"
7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;
8. Maintain accountability to low-income community residents by maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods or low-income residents and provide a formal process for low-income program beneficiaries to advise the organization in decisions regarding design, siting, development, and management of affordable housing;

9. Has demonstrated capacity for carrying out housing projects assisted with HOME funds;
10. Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, the organization must be able to show one year of serving the community before HOME funds are reserved.

Effective Period

Operating expenses will be available to successful respondents for one year from grant agreement execution date.

Eligible Operating Expenses

Operating expenses are reasonable and necessary costs for the operation of the organization. Eligible costs will be reimbursed within the terms of the grant agreement. Such costs may include:

- salaries, wages, and other employee compensation and benefits
- employee education, training, and travel
- rent, utilities, communication costs, taxes, insurance
- equipment, materials and supplies

The City reserves the right to require key staff or key Board Members to attend certain training as a condition of receiving funds awarded under this solicitation. The purpose of such training would be to increase the organization's capacity to carry out its mission to develop affordable housing. Any requirement to attend training will be specified in the grant agreement between the respondent and City.

CHDO Certification and Capacity Development

The City must certify the respondent as a CHDO and document its capacity each time there is a commitment of funds per new requirements from the 2013 Final Home Rule. If an organization desires to apply for HOME funds set aside for CHDO activities, the organization must be certified and document that the organization has the capacity to own, develop, or sponsor housing each time it commits CHDO funds to an organization for a specific project.

Additionally, to qualify as a CHDO, the 2013 Final Home Rule requires that the organization have paid employees with housing experience appropriate for the role the organization expects to take on such as developer, sponsor, or owner. The organization may also now own and operate housing that it does not develop. Therefore, an organization that will undertake development activities must demonstrate development capacity and an organization that will undertake property ownership and management must demonstrate capacity to do so.

The requirement for development capacity can no longer be demonstrated through the use of consultants with development experience, except during the first year of operation as a Community Housing Development Organization, provided that the consultant trains the staff to build capacity. In addition, the capacity requirement cannot be met through the use of volunteers or staff that is donated by another organization. Consultants or volunteers can continue to fill occasional skill gaps or undertake activities that are required only on a periodic

basis (e.g. project underwriting), but cannot be the basis of establishing capacity of an organization seeking a CHDO designation.

004. - TERM OF CONTRACT

A contract awarded in response to this RFA will be for a one (1) year period from date of execution. A letter of award will be provided to the selected Respondent. The Respondent will have two (2) weeks to provide written acknowledgement.

005. - PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held at 1400 S. Flores, Department of Planning & Community Development's Division of Grants Monitoring and Administration Conference Room, at **11:00 a.m. Central Time, on Tuesday, July 07, 2015**. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on the City's website www.sanantonio.gov/gma. Attendance at the Pre-Submittal Conference is optional, but highly encouraged.

This meeting place is accessible to disabled persons. The Department of Planning & Community Development's Division of Grants Monitoring and Administration Conference Room is wheelchair accessible. The accessible entrance is located at 1400 S. Flores. Accessible parking spaces are located at 1400 S. Flores. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral response given at the Pre-Submittal Conference that is not confirmed in writing and posted with this solicitation shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Respondents are encouraged to resubmit their questions in writing, to the City Staff person identified in the Restrictions on Communication section, after the conclusion of the Pre-Submittal Conference.

006. - APPLICATION AND SUBMITTAL REQUIREMENTS

Respondent's submission shall include the Application (Excel), Exhibit items listed in the Submission Checklist, and all required attachments to this RFA, noted with the appropriate heading. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

Respondent is expected to examine this RFA carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND

PROVIDE ANY OF THESE APPLICATION REQUIREMENTS MAY RESULT IN THE RESPONDENT'S APPLICATION BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

Respondent shall submit their application in the following manner:

- One (1) original Application, signed in ink
- One (1) hard copy of the Application
- One (1) electronic copy of the Application on compact disk (CD) containing a Microsoft Excel version of the Application with any attachments requiring in an Adobe PDF.
- Applications should be submitted in a sealed package clearly marked with the project name and "CHDO Operating Expense Funding" on the front/top of the package.

Applications must be received in the City Clerk's Office no later than 2:00 p.m., Central Time, on Friday, July 19, 2015 at the address below. Any application or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the mailing address in a timely manner does not guarantee its receipt in the City Clerk's Office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk's Office

Attn: Planning and Community Development – Division of Grants Monitoring and Administration

100 Military Plaza

2nd Floor, City Hall San Antonio, Texas 78205

Physical Address:

City Clerk's Office

Attn: Planning and Community Development – Division of Grants Monitoring and Administration

100 Military Plaza

2nd Floor, City Hall San Antonio, Texas 78205

Applications sent by facsimile or email will NOT be accepted.

Application Format

Each application shall be typewritten and submitted on 8 ½" x 11" white paper. The application should be placed inside a three ring binder. The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aids, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and

printed one-sided. Margins shall be no less than 1" around the perimeter of each page. Websites, or URLs shall not be submitted in lieu of the printed application. Each application must include the sections and attachments in the sequence listed in the Submittal Checklist, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the application or may negatively affect scoring.

Modified Applications

Applications may be modified provided such modifications are received prior to the due date for submission of applications and submitted in the same manner as original application. It should include a cover letter with the application, indicating it is a "Modified Application" and that the Original application is being withdrawn.

Correct Legal Name

Respondents who submit applications to this RFA shall correctly state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the General Information form, the Director of Planning and Community Development shall have the discretion, at any point in the contracting process, to suspend consideration of the application.

Firm Offer

All provisions in Respondent's application, including any estimated or projected costs, shall remain valid for one hundred and eighty (180) days following the deadline date for submissions or, if an application is accepted, throughout the entire term of the contract.

Confidential or Proprietary Information

All applications become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.

Cost of Application

Any cost or expense incurred by the Respondent that is associated with the preparation of the Application, the Pre-Submittal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

007. - CHANGES TO RFA

Changes to the RFA, made prior to the due date for applications shall be made directly to the original RFA. Changes are captured by creating a replacement version each time the RFA is changed. **It is Respondent's responsibility to check for new versions until the application due date.** City will assume that all applications received are based on the final version of the RFA as it exists on the day applications are due.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFA.

008. - RESTRICTIONS ON COMMUNICATION

Respondents are prohibited from communicating with elected City officials and their staff regarding the RFA or applications from the time the RFA has been released until the contract is posted as a City Council agenda item. These restrictions extend to "thank you" letters, phone calls, emails, and any contact that results in the direct or indirect discussion of the RFA and/or application submitted by respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's application from consideration.

The only communication allowed with City staff includes the following:

- Respondents may ask verbal questions concerning this RFA at the Pre-Submittal Conference.
- Respondents may submit questions concerning this RFA to the Staff Contact Person listed below until 4:30p.m. Central Standard Time, on Tuesday, July 7, 2015. Questions received after the stated deadline will not be answered. All questions shall be sent by e-mail to:
Laura L. Salinas-Martinez
Contract Manager, Department of Planning and Community Development,
Division of Grants Monitoring and Administration
laura.salinas@sanantonio.gov
- Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. In addition, during interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from interviews as it deems in its best interests.
- Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date.
- Respondents desiring a review of the solicitation process may submit a written request no later than seven calendar days from the date letter was sent. The letter will indicate the name and address for submission of requests for review.

City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations initiated by City staff persons shall not be considered in violation by Respondent of this section.

009. - EVALUATION OF CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all applications received in response to this RFA. The City may appoint a selection committee to perform the evaluation. Each application will be analyzed to determine overall responsiveness and qualifications under the RFA. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City Council.

For Respondents who have previously received CHDO Operating Expense funds, the City will first assess contract performance to see if any residual funds are eligible for carryover. Additionally, the City will review prior awards to ensure that future awards do not exceed the cap of \$50,000 per Respondent's fiscal year.

The following criteria and scoring methodology is used by the City in the evaluation and selection of the CHDO Operating Expense applications seeking funding. A total of 100 points are possible.

Capacity: Experience, Background, Qualifications	50 Points
Proposed Plan and Use of Funds	50 Points

010. - AWARD OF CONTRACT AND RESERVATION OF RIGHTS

City reserves the right to award one, more than one or no contract(s) in response to this RFA.

The Contract, if awarded, will be awarded to the Respondent(s) whose Application(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.

City may accept any Application in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFA on the part of City. However, final selection of a Respondent is subject to City Council approval.

City reserves the right to accept one or more applications or reject any or all applications received in response to this RFA, and to waive informalities and irregularities in the applications received. City also reserves the right to terminate this RFA, and reissue a subsequent solicitation, and/or remedy technical errors in the RFA process.

No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFA and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

This RFA does not commit the City to enter into a Contract, award any services related to this RFA, nor does it obligate City to pay any costs incurred in preparation or submission of a application or in anticipation of a contract.

If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.

The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.

Conflicts of Interest

Respondent 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 the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he 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; or 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.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City's Ethics Code. (Discretionary Contracts Disclosure – form may be found online at <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>)

Independent Contractor

Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for applications or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. The completed conflict of interest questionnaire should be submitted as part of this application. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

011. - SCHEDULE OF EVENTS

Following is a list of **projected dates/times/locations** with respect to this RFA:

RFA Release Date	Friday, June 19, 2015
Pre-Submittal Conference	Tuesday, July 7, 2015 at 11:00am Department of Planning & Community Development 1400 S. Flores, GMA Conference Room
Final Questions Accepted	Tuesday, July 7, 2015 at 4:30pm
Applications Due	Friday, July 17, 2015 at 2:00pm Office of the City Clerk 100 Military Plaza, 2 nd Floor

012. - INSURANCE REQUIREMENTS

If selected to provide the services described in this RFA, Respondent shall be required to comply with the insurance requirements set forth below:

Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Department of Planning & Community Development, which shall be clearly labeled "CHDO Operating Expense" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Fire Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

A Respondent's financial integrity is of interest to City; therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- , in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000

4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence
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Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that name Respondent and City as additional insureds. Respondent shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto and may require the 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). Respondent shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Department of Planning & Community Development
Division of Grants Monitoring & Administration
P.O. Box 839966
San Antonio, Texas 78283-3966

Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, 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 City is an additional insured shown on the policy;

Workers’ compensation and employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and

Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon Respondent'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 Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

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

It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

Respondent and any subcontractors are responsible for all damage to their own equipment and/or property.

013. - INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFA, Respondent shall be required to comply with the indemnification requirements set forth below:

INDEMNIFICATION

RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

Optional Provisions:

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by RESPONDENT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. RESPONDENT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If RESPONDENT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and RESPONDENT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its

option, to be represented by advisory council of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of RESPONDENT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for RESPONDENT or any subcontractor under worker's compensation or other employee benefit acts.