

CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
DEPARTMENT OF COMMUNITY INITIATIVES

AGENDA ITEM NO.

**53**

TO: Mayor and City Council

FROM: Dennis J. Campa, Director, Department of Community Initiatives

THROUGH: Terry M. Brechtel, City Manager

COPIES TO: Frances A. Gonzalez, Assistant to the City Manager; City Attorney's Office; Purchasing Department; Finance; Department of Economic Development; Office of Management & Budget; File

SUBJECT: **ORDINANCE APPROVING A CONTRACT WITH COMPUTER SOLUTIONS TO IMPLEMENT THE SINGLE PORTAL OF ENTRY FOR CHILD CARE AND AUTHORIZING PURCHASE OF BIZTALK PROCESSORS**

DATE: June 26, 2003

SUMMARY AND RECOMMENDATION

This ordinance authorizes the execution of a contract for a set fee for services not to exceed \$830,700.00, for the period beginning July 1, 2003 with Great South Texas Corporation dba Computer Solutions to implement a web-based single portal of entry for coordination of a community-wide child care safety net to be utilized by the Child Care Delivery System (CCDS), Head Start and Public Pre-Kindergarten. Additionally, this ordinance authorizes the purchase of four BizTalk Server ENT 2002 single processors from SHI-Government Solutions utilizing the Texas Department of Information Resources Contract number 313-0018 at a total cost of \$100,736.00. This ordinance also authorizes a revised budget for the CCDS.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

A single portal of entry (SPE) for early childhood education and development programs will create a virtual one-stop, seamless access to services that will be transparent to the participants. It will reduce waiting time for publicly funded child care services because it will combine the waiting lists of partner programs and efficiently provide information regarding available resources. It will also allow parents to select the most appropriate program for their needs, through a one-stop process.

Early childhood education and development programs have been providing services in San Antonio for years. The three largest publicly funded programs are the Child Care Delivery System (CCDS), Head Start and Public School Pre-Kindergarten (Pre-K). CCDS is managed by the City of San Antonio, Department of Community Initiatives, Children's Resources Division (CRD), under a contract with the Texas Workforce Commission through Alamo Workforce Development, Inc. Head Start is managed by Parent Child Incorporated (PCI), under a contract with the City of San Antonio. Public Pre-K's are funded by the Texas Education Agency and managed by each of the

separate independent school districts in the City.

Although these agencies work as partners and communicate with each other on a routine basis, each has developed its own database of program and participant data. The individual development of databases occurred because coordinated efforts were not yet available, the need to capture data was immediate and agency funding sources mandate the type of system to be used. These separately developed databases are not compatible with each other and therefore the agencies cannot use automation to share information among partners. Currently information on participant needs and availability of services must be retrieved manually from one system, shared with the other programs by paper copy, and then entered into their systems. These extra steps can cause errors and delays in children being placed in care. Also under the current circumstances, one partner does not have instant access to available resources of the other partners. This results in the participant being placed on a waiting list while the resources are manually researched, which may cause the family to be placed at risk of losing their job or children may be placed in conditions that are unstable and not conducive to learning.

### POLICY ANALYSIS

This ordinance supports the City's efforts to provide high quality early care and education, to provide seamless safety net services to its residents, and to provide convenient, decentralized access to services.

The solution to providing a seamless child care system between these three major programs is the development of an Internet web-based single portal of entry, for a community-wide childcare safety net. The design of the SPE calls for the use of the web which allows software to interface with many different database systems providing for a single point of data entry and retrieval, for multiple databases. The intake procedure will ensure that participants are automatically placed into the systems of all programs linked by the single portal. The intake procedure will utilize a universal intake form and is performed just one time, at any location. The system will be easily accessible through existing computer networks and hardware using a common software application by all programs, from any location in the community. Common software will enable the determination of pre-eligibility or actual participant eligibility for each program. The single portal of entry will allow the early childhood education and care partner programs to qualify participants for all potential programs, reserve a child care slot at a partner site and refer participants to the appropriate partner from a single point of entry anywhere in the system.

The City Council passed and approved Ordinance No. 94216 on June 28, 2001, which authorized the Department of Community Initiatives to enter into a contract with Science Applications International Corporation (SAIC) to design the SPE. SAIC completed the design in November 2001. A Request for Proposals (RFP) for the implementation of the SPE was issued on January 10, 2002 with five vendors responding. During the period of evaluation, DCI was required by its grantor Alamo Workforce Development, Inc. to spend funds originally allocated for the project for emergency direct child care. Before the evaluation was completed and funds re-secured, the offers expired. Consequently, a new RFP was issued on June 28, 2002. Only one vendor responded to this RFP and it was determined that it would be in the best interest of the City to re-issue the RFP and solicit more interest.

The Purchasing Department advertised a High Technology RFP in the Commercial Recorder,

DemandStar online bid notification service and by e-mail to potential vendors on February 14, 2003 for qualified companies to submit proposals to develop a web-based, single portal of entry for a community-wide childcare safety net.

Seven proposals were received. Three were deemed non-responsive for not providing the required bid bond: eSiteful, Avasina, and G.A. Sullivan. One proposal, from OnBoard Technologies, was determined by the evaluation team to be non-responsive because it did not meet specifications. OnBoard's proposal would require that the SPE override partners' systems which was specifically not allowed in the design. Three qualified proposals were received and evaluated: Computer Solutions, Deloitte & Touche and Science Applications International Corporation.

The Evaluation Team convened initially on April 11, 2003 and scored the three qualified submissions in the categories of *Experience*, *Capabilities/Qualifications* and *Responsiveness to Purpose*. The six member Evaluation Team was comprised of representatives from the City's Purchasing Department; Information Technology Services Department; the Department of Community Initiatives divisions of Operational Support and Children's Resources; the San Antonio Independent School District, and Parent/Child, Inc. The categories of *Local Business Enterprise Participation*, *Disadvantaged Business Enterprise Participation (DBA)* and *Small Business Economic Development Advocacy (SBEDA)*, were evaluated by the Department of Economic Development. The scoring matrix is included as Attachment A.

After careful review and evaluation of the submissions received, it was the recommendation by consensus of the Committee that Science Applications International Corporation and Computer Solutions, be invited to present their proposal to the Director of the Department of Community Initiatives and the Evaluation Team. The process of interviewing top rated applicants was outlined in the RFP. At the conclusion of the presentation on May 9, 2003, the Evaluation Team re-scored the two proposal using the same criteria set forth in the RFP for the initial evaluation. Using the information gained from the presentations, the Evaluation Team recommended Computer Solutions for this contract.

Computer Solutions is headquartered in San Antonio, woman-owned, and has 50 employees. Computer Solutions was selected because it offered an innovative approach to the implementation of the system and will use the Biz Talk application which is considered to be cutting edge technology to ensure that the system will be more efficient and effective for the City's Information Technology Services Department to host and maintain. Additionally, Computer Solutions has developed a nationwide loan intake system for a bank that operates similarly to the SPE and received excellent references from its customer base.

It is anticipated that the system will be fully implemented and functional by May 31, 2004. The next step will be to continue increasing the number of partners for the project including school districts and other child care providers.

#### FISCAL IMPACT

The total cost of the project is projected to be \$943,436. Funding is provided through CCDS local initiatives federal match funds and CCDS automation program funding. Computer Solutions will receive up to \$830,700 for this contract. Additionally, four BizTalk Server ENT 2002 single processors will be purchased from SHI-Government Solutions utilizing the Texas Department of Information Resources (DIR) "Go Direct" Program, DIR-Contract number 313-0018 and in

accordance with the State of Texas Cooperative Purchasing Agreement as adopted by the City of San Antonio in Resolution No. 91-39-53. The BizTalk processors will be used in the data processing mode for the SPE. Up to \$2,000,000 allocated from federal match is available from FY02-03 CCDS local initiatives federal match through December 31, 2003. This program requires no General Fund support.

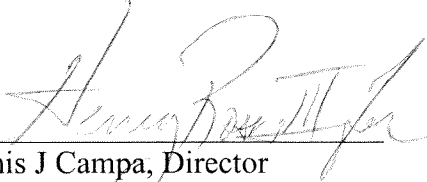
<b>Computer Solutions</b>		<b>\$830,700</b>
- Software Price	\$748,000	
- 90 day warranty	\$18,500	
- 5 year maintenance (estimate)	\$64,200	
<b>4 Biz Talk Processors</b> (through Texas Department of Information resources contract with SHI Government Solutions including 1½ years of warranty/upgrades)		<b>\$100,736</b>
<b>2 Servers</b> (through separate annual City contract)		<b>\$12,000</b>
<b>Total Cost for Implementation of SPE Project</b>		<b>\$943,436</b>


#### COORDINATION

The Department of Community Initiatives coordinated activities with the Purchasing and General Services Department, Information Technology Services Department, the City Attorney's Office, Finance Department, the Department of Economic Development, the Office of Management and Budget, Parent/Child Inc., the Northeast Independent School District and the San Antonio School District.

#### SUPPLEMENTARY COMMENTS

The required discretionary contracts disclosure form is attached.

  
Dennis J Campa, Director  
Department of Community Initiatives

  
Frances A. Gonzalez  
Assistant to the City Manager

Approved:

  
Terry M. Brechtel  
City Manager

**EVALUATION SUMMARY**

	<b>Computer Solutions</b>	<b>SAIC</b>
<b>History / Experience(15 points possible)</b>	14.00	12.00
<b>Capabilities ( 25 points possible)</b>	23.00	21.00
<b>Responsiveness 15 points possible)</b>	14.00	11.00
<b>Pricing (25 points possible</b>	23.26	22.72
<b>SUBTOTAL:</b>	<u>74.26</u>	<u>66.72</u>
<b>Small Business Economic Development Advocacy (SBEDA) Policy Compliance (20 points possible)</b>		
Local business Enterprise Participation	10	6
Disadvantaged Business Enterprise Participation	5	2.5
SBEDA Policy Compliance	2	5
<b>SUBTOTAL:</b>	<u>17</u>	<u>13.5</u>
<b>TOTAL SCORES:</b>	<b>91</b>	<b>80</b>

## Attachment D – Discretionary Contracts Disclosure

### City of San Antonio Discretionary Contracts Disclosure\*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2*

*Attach additional sheets if space provided is not sufficient.*

*State "Not Applicable" for questions that do not apply.*

**\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of Council action, and no later than five (5) business days after any change about which information is required to be filed.**

#### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Carolyn H. Labatt

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

Great South Texas Corporation, dba Computer Solutions

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Applied Engineering Management Corporation  
BIF Technologies

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.



**Computer Solutions**  
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San Antonio, Texas 78216  
Office (210) 369-0300  
Fax (210) 369-0389  
[www.comsoltx.com](http://www.comsoltx.com)

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

**To Whom Made:**

**Amount:**

**Date of Contribution:**

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

**Signature:**

**Title: Secretary/Treasurer Date: March 28, 2003**

**Company:** GREAT SOUTH TEXAS, CO, LP  
dba COMPUTER SOLUTIONS

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**CHILD CARE DELIVERY SYSTEM PROGRAM - CCDS**

September 1, 2002 - August 31, 2003

26-039013

			Budget	Revision #10 +/-	Revised Budget
<b>REVENUES:</b>					
00-004	073965	PRS - Foster Care	422,504	-	422,504
00-004	073973	PRS - Other Foster Care	149,606	-	149,606
00-004	073981	PRS - In Home	1,065,668	-	1,065,668
00-004	073999	Food Stamp E&T	18,879	-	18,879
00-004	074005	CCDF Choices	-	-	-
00-004	074013	CCDF Transitional	-	-	-
00-004	074021	Title XX - At Risk	188,747	-	188,747
00-004	074039	CCDF Workforce Applicant	-	-	-
00-004	074047	CCDF Early Childcare	26,758,594	-	26,758,594
00-004	074054	CCDF QIA - Expansion	1,409,429	-	1,409,429
00-004	077727	Welfare to Work 70%	122,837	-	122,837
00-004	077735	Welfare to Work 30%	7,946	-	7,946
00-004	074070	Carryforward 26-039010 - Federal Match	7,540,971	-	7,540,971
00-004	074088	CCDF Program Operations	3,772,993	-	3,772,993
00-004	074096	TDPRS Program Operations - Foster Care	-	-	-
00-004	077750	TDPRS Program Operations - Other Foster Care	-	-	-
00-004	077750	TDPRS Program Operations - In Home	-	-	-
00-004	077818	Incentive Award Operations	8,299	-	8,299
00-004	074104	Carryforward 26-039010 - Federal Match Operations	851,447	-	851,447
00-004	079459	2003 CCLI Federal Match	1,256,262	-	1,256,262
00-004	XXXXXX	2002 CCLI Federal Match	113,951	-	113,951
00-004	074112	TWC Revenue Clearing Account	-	-	-
00-009	105460	TRF General Fund (29-024)	1,200,000	-	1,200,000
<b>TOTAL REVENUES</b>			<b>44,888,133</b>	<b>-</b>	<b>44,888,133</b>

**EXPENDITURES:****38-15-02 Child Care Delivery System - Administration**

01-010	731000	Reg Salaries & Wages	196,714	-	196,714
01-011	731018	Overtime Salaries & Wages	-	-	-
01-012	731026	Higher Class. Salary	1,200	-	1,200
01-019	731034	Language Skill Pay	600	-	600
01-030	731042	FICA	15,691	-	15,691
01-040	731059	TMRS	23,187	-	23,187
01-050	731067	Flex Benefits	25,076	-	25,076
01-051	731075	Life Insurance	482	-	482
01-060	731083	Worker's Disability Comp.	2,250	-	2,250
01-072	731091	Personal Leave Buy Back Pay	5,000	-	5,000
02-130	732743	Car Expense Allowance	2,000	-	2,000
<b>Total 38-15-02</b>			<b>272,200</b>	<b>-</b>	<b>272,200</b>

**38-15-05 Child Care Delivery System - Systems**

01-010	731109	Reg Salaries & Wages	85,838	-	85,838
01-011	731117	Overtime Salaries & Wages	-	-	-
01-012	731125	Higher Class. Salary	-	-	-
01-019	731133	Language Skill Pay	-	-	-
01-030	731141	FICA	6,582	-	6,582
01-040	731158	TMRS	9,539	-	9,539
01-050	731166	Flex Benefits	9,862	-	9,862
01-051	731174	Life Insurance	196	-	196
01-060	731182	Worker's Disability Comp.	500	-	500
01-072	731190	Personal Leave Buy Back Pay	1,656	-	1,656
02-110	XXXXXX	Communications	20,000	-	20,000



**CHILD CARE DELIVERY SYSTEM PROGRAM - CCDS**

September 1, 2002 - August 31, 2003

26-039013

			Budget	Revision #10 +/-	Revised Budget
02-130	730846	Car Expense Allowance	100	-	100
03-243	731208	Computer Software	65,000	-	65,000
05-360	731216	Computer Equipment	190,000	-	190,000
		<b>Total 38-15-05</b>	<b>389,273</b>	<b>-</b>	<b>389,273</b>
		<b>38-15-06 Child Care Delivery System - Certificate/Operations</b>			
01-010	731224	Reg Salaries & Wages	2,046,426	-	2,046,426
01-011	731232	Overtime Salaries & Wages	1,500	-	1,500
01-012	731240	Higher Class. Salary	-	-	-
01-019	731257	Language Skill Pay	10,200	-	10,200
01-030	731265	FICA	171,894	-	171,894
01-040	731273	TMRS	261,528	-	261,528
01-050	731281	Flex Benefits	397,848	-	397,848
01-051	731299	Life Insurance	4,181	-	4,181
01-060	731307	Worker's Disability Comp.	23,250	-	23,250
01-072	731315	Personal Leave Buy Back Pay	21,000	-	21,000
02-110	731323	Communications : Telephones	185,936	-	185,936
02-112	731331	Rental of Pagers	1,000	-	1,000
02-113	731349	Mail & Parcel Post	44,000	-	44,000
02-116	731356	Rental of Facilities	319,600	-	319,600
02-119	731364	Rental of Equipment	15,000	-	15,000
02-120	731372	Inter-Fund Rent of City Motor Pool	8,400	-	8,400
02-124	731380	Travel - Official	10,000	-	10,000
02-128	731398	Education	5,000	-	5,000
02-130	731406	Car Expense Allowance	15,500	-	15,500
02-142	731414	Maint & Rep. Mach & Equip	500	-	500
02-160	731422	Fees to Prof. Contractors	35,000	-	35,000
02-161	731430	Temporary Services	59,000	-	59,000
02-175	731448	Advertising & Publications	5,500	-	5,500
02-178	731455	Membership Dues & Lic.	800	-	800
02-181	731463	Binding Printing & Repro.	22,500	-	22,500
02-187	731471	Subscriptions to Publications	1,000	-	1,000
02-193	731489	Other Contractual Services	-	-	-
03-210	731497	Office Supplies	30,000	-	30,000
03-212	731505	Janitor Supplies	-	-	-
03-216	731513	Food	800	-	800
03-230	731521	Photographic Supplies	-	-	-
03-232	731539	Tools, Apparatus & Accessories	50	-	50
03-242	731547	Maint & Rep. Material - M & E	12,000	-	12,000
03-244	731554	Other Commodities	200	-	200
04-260	731562	Liab. , Hazard & Fidelity	32,861	-	32,861
05-373	731570	Machinery & Equipment - Other	-	-	-
05-375	731588	Furniture & Fixtures	20,000	-	20,000
05-375	732859	Furniture & Fixtures - Incentive	8,299	-	8,299
		<b>Total 38-15-06</b>	<b>3,770,773</b>	<b>-</b>	<b>3,770,773</b>
		<b>38-15-16 Child Care Delivery System - Indirect</b>			
01-010	731596	Reg Salaries & Wages	225,947	-	225,947
01-019	731604	Language Skill Pay	-	-	-
01-030	731612	FICA	18,910	-	18,910
01-040	731620	TMRS	24,853	-	24,853
01-050	731638	Flex Benefits	21,417	-	21,417
01-051	731646	Life Insurance	826	-	826
01-060	731653	Workers Comp	1,350	-	1,350
01-072	731661	Personal Leave Buy Back Pay	5,000	-	5,000
02-116	731679	Rental of Facilities	5,000	-	5,000
02-120	733360	Rent of City Motor Pool	300	-	300

**CHILD CARE DELIVERY SYSTEM PROGRAM - CCDS**

September 1, 2002 - August 31, 2003

26-039013

		Budget	Revision #10 +/-	Revised Budget
02-124	731687 Travel - Official	12,000	-	12,000
02-128	731695 Education	1,500	-	1,500
02-130	731703 Car Expense Allowance	3,500	-	3,500
02-160	731711 Fees to Professional Contractors	2,700	-	2,700
02-161	731729 Temporary Services	3,500	-	3,500
02-178	731737 Membership Dues & Lic.	-	-	-
02-187	742874 Subscriptions to Publications	300	-	300
02-193	731745 Other Contractual Services	-	-	-
03-243	731752 Computer Software	1,600	-	1,600
03-244	731760 Other Commodities	850	-	850
05-360	731778 Computer Equipment	7,961	-	7,961
05-375	731786 Furniture & Fixtures	-	-	-
	<b>Total 38-15-16</b>	<b>337,514</b>	<b>-</b>	<b>337,514</b>
	<b>38-15-17 CCDS - Program Service Providers</b>			
02-160	731794 PRS - Foster Care	422,504	-	422,504
02-160	731802 PRS - Other Foster Care	149,606	-	149,606
02-160	731810 PRS - In Home	1,065,668	-	1,065,668
02-160	731828 Food Stamp E&T	18,879	-	18,879
02-160	731836 CCDF Choices	-	-	-
02-160	731844 CCDF Transitional	-	-	-
02-160	731851 Title XX - At Risk	188,747	-	188,747
02-160	731869 CCDF Workforce Applicant	-	-	-
02-160	731877 CCDF Early Childcare	26,758,594	-	26,758,594
02-160	731885 CCDF QIA - Expansion	1,409,429	-	1,409,429
02-160	732867 Welfare to Work 70%	122,837	-	122,837
02-160	732875 Welfare to Work 30%	7,946	-	7,946
02-160	731893 Carryforward 26-039010 - Federal Match - Direct Care	5,443,152	-	5,443,152
02-160	731901 Carryforward 26-039010 - Federal Match - Quality Initiative	-	-	-
02-160	758151 2003 CCLI Federal Match - Direct Care	585,636	-	585,636
02-160	XXXXXX 2002 CCLI Federal Match - Direct Care	102,556	-	102,556
02-160	731919 TWC Expense Clearing Account	-	-	-
	<b>Total 38-15-17</b>	<b>36,275,554</b>	<b>-</b>	<b>36,275,554</b>
	<b>38-15-18 CCDS - Federal Match: Quality Initiatives</b>			
02-119	732883 Rental of Equipment - After School Challenge Program	2,500	-	2,500
02-124	732891 Travel - Official - After School Challenge Program	2,615	-	2,615
02-128	732909 Education - After School Challenge Program	20,422	-	20,422
02-128	732917 Education - Kid Quest Program	2,500	-	2,500
02-160	732925 Fees to Professional Contractors - After School Challenge Program	29,643	-	29,643
02-160	732933 Fees to Professional Contractors - Kid Quest Program	14,000	-	14,000
02-160	733212 Fees to Professional Contractors - A.N.G.E.L.S. Program	12,750	-	12,750
02-160	735498 Carryforward 26-039010 - Federal Match - Quality Initiatives	398,436	(398,436)	-
02-160	758169 2003 CCLI Federal Match - Quality Initiative	545,000	(545,000)	-
02-163	735530 Avance - Kinder Readiness	60,000	-	60,000
02-163	733246 Avance - Career Readiness	148,463	-	148,463
02-163	733253 Blessed Sacrament Academy - CDC Professional Accreditation	55,000	-	55,000
02-163	733261 KLRN - Kinder Readiness	294,957	-	294,957
02-163	735548 Family Service Association - Kinder Readiness	207,555	-	207,555
02-163	735555 Northside ISD - Kinder Readiness	120,000	-	120,000
02-163	735563 YWCA - Kinder Readiness	145,139	-	145,139
02-163	735571 UTSA - Kinder Readiness Evaluation	150,000	-	150,000
02-163	XXXXXX Avance - RFH	51,208	-	51,208
02-163	XXXXXX Family Service Association - RFH	24,231	-	24,231
02-163	XXXXXX Family Service Association - Accreditation Program	30,737	-	30,737
02-163	XXXXXX Good Samaritan - Intergenerational	43,542	-	43,542

**CHILD CARE DELIVERY SYSTEM PROGRAM - CCDS**

September 1, 2002 - August 31, 2003

26-039013

		Budget	Revision #10 +/-	Revised Budget
02-163	XXXXXX University of the Incarnate Word - Kinder Readiness	78,220	-	78,220
02-163	XXXXXX UTSA - Kinder Readiness Curricula	48,306	-	48,306
02-163	XXXXXX YMCA - Accreditation Program	82,025	-	82,025
02-163	XXXXXX Computer Solutions - SPE	-	830,700	830,700
02-175	733279 Advertising and Publications - Kid Quest Program	3,000	-	3,000
02-175	733287 Advertising and Publications - A.N.G.E.L.S. Program	840	-	840
02-178	733295 Membership, Dues & Licenses - Kid Quest Program	300	-	300
02-181	733303 Binding, Printing, Reproduction - After School Challenge Program	5,700	-	5,700
02-181	733311 Binding, Printing, Reproduction - Kid Quest Program	2,500	-	2,500
02-181	733329 Binding, Printing, Reproduction - A.N.G.E.L.S. Program	6,246	-	6,246
03-210	733337 Office Supplies - After School Challenge Program	2,000	-	2,000
03-216	733345 Food - After School Challenge Program	25,120	-	25,120
03-216	733352 Food - A.N.G.E.L.S Program	1,050	-	1,050
03-230	733378 Photographic Supplies - A.N.G.E.L.S. Program	150	-	150
03-238	733386 Recreation Supplies - After School Challenge Program	7,000	-	7,000
03-238	733394 Recreation Supplies - Kid Quest Program	12,700	-	12,700
03-243	XXXXXX Computer Software - SPE	-	100,736	100,736
03-244	733402 Other Commodities - A.N.G.E.L.S. Program	3,964	-	3,964
05-360	XXXXXX Computer Equipment - SPE	-	12,000	12,000
05-373	733410 Machinery & Equipment - Other - After School Challenge Program	5,000	-	5,000
	<b>Total 38-15-18</b>	<b>2,642,819</b>	<b>-</b>	<b>2,642,819</b>
	<b>38-15-19 Child Care Services - Local Funded</b>			
02-160	735506 G.F. Match - Local Initiatives	1,023,463	-	1,023,463
02-160	735514 G.F. Match - Our City Cares	50,000	-	50,000
02-160	735522 G.F. Match - SMART START	100,000	-	100,000
02-163	741033 Avance - Career Readiness	26,537	-	26,537
02-163	741041 Blessed Sacrament Academy - CDC Professional Accreditation	-	-	-
02-163	741058 KLRN - Kinder Readiness	-	-	-
02-163	741066 Northside ISD - Kinder Readiness	-	-	-
	<b>Total 38-15-19</b>	<b>1,200,000</b>	<b>-</b>	<b>1,200,000</b>
	<b>TOTAL EXPENSES</b>	<b>44,888,133</b>	<b>-</b>	<b>44,888,133</b>

Fund Index Only 000513

# **AGREEMENT FOR SINGLE PORTAL ENTRY SYSTEM**

**BETWEEN  
THE CITY OF SAN ANTONIO**

**AND**

**GREAT SOUTH TEXAS CORPORATION  
D/B/A COMPUTER SOLUTIONS**

This Agreement is made and entered into this 1st day of July, 2003, by and between the City of San Antonio, a Texas Home Rule Municipal Corporation ("San Antonio" or "CITY"), and Great South Texas Corporation D/B/A Computer Solutions, a Maryland Corporation ("Computer Solutions" or "CONTRACTOR"), referred to collectively herein as the "Parties".

**WHEREAS**, San Antonio desires to hire CONTRACTOR to implement a Single Portal Entry system for the CITY, as more particular described in CITY's RFP #03-042 and attachments thereto; and

**WHEREAS**, the CONTRACTOR represents that it possesses the knowledge, ability, professional skills, and qualifications to perform this work in an expeditious and economical manner consistent with CITY's interests:

**NOW THEREFORE**, in consideration of the promises, mutual covenants, and agreements contained herein, the parties agree as follows:

## **1. DEFINITIONS**

(a) "Application Software" means software provided under the terms of the Contract Documents developed by CONTRACTOR. The Application Software may consist of one or more separate software modules that support distinct functions of the final integrated product.

(b) "Bug Fixes" are corrections to the code that are necessary to make the System operate in accordance with the technical specifications contained in the Contract Documents.

(c) "Collaborators" means the following entities: Texas Workforce Commission, Alamo Workforce Development, Inc., Northeast Independent School District, San Antonio Independent School District, Parent/Child Inc., provided, that such entities shall be considered "Collaborators" (1) only in connection with the use of the System as described in CITY's RFP #03-042, not with hosting or downloading the System on their own servers.

(d) "Documentation" means the information about the System, whether in electronic or hard-copy format, provided by the CONTRACTOR, under the terms of the Contract Documents, to assist CITY in the understanding and use of the System.

(e) "Enhancements" means changes to the System that make the System run better and add functionality that were not in the original specifications, including, but not limited to adding collaborators not already identified herein.

(f) "Execution Date" means the date set forth in the introductory paragraph of this Agreement as the date on which this Agreement is made and entered.

(g) "Maintenance" means upgrades and support.

(h) "Majority Ownership" means ownership by any one person or entity of fifty-one percent (51%) or more of the shares of any corporate entity.

(i) "Revenue" means the total amount money or the value of other considerations received of any kind or nature whatsoever by CONTRACTOR from parties other than CITY derived from the work product for the System, including, but not limited to: the software licensing fees, software installation, construction, training, and analysis, and consultation charges, (but excluding support and warranty fees, and also upgrade and enhancement fees that are assessed post implementation after an initial license is granted), before any and all deductions or reductions for any purpose, including but not limited to, the cost of goods sold or other related expenses.

(j) "Support" means assistance provided by CONTRACTOR to CITY by telephone or e-mail during CITY's regular business hours to answer questions regarding the use of the System.

(k) "System" means a Single Portal Entry System, consisting of the Software and related products referred to in the Contract Documents. Products included are source code and machine readable object code for Application Software, training, training materials and any other related materials which are furnished to the CITY by the CONTRACTOR for use in connection with such Software.

(l) "Upgrades" means changes to the System that become necessary due to changes in the CITY's operating system software or hardware, or other software or hardware used by CITY, with which CONTRACTOR's System, provided under the terms of this Agreement, must interface.

(m) "Work Product" means all items, including the System and intellectual property, furnished by CONTRACTOR to CITY in accordance with the terms of this Agreement.

## 2. ESSENTIAL PROJECT DATES AND TERM OF AGREEMENT

(a) "Essential Project Dates" means the dates identified on the Project Schedule, on which essential project tasks are to be completed. The Parties shall meet upon the execution of this Agreement and establish, by mutual agreement, the Project Schedule. The agreed upon Project Schedule shall be in writing, signed by the Project Managers of both parties, attached hereto as Exhibit B and shall be fully incorporated into this Agreement by this reference. The Parties agree that time is of the essence in meeting Essential Project Dates. Failure to meet such Essential Project Dates shall be an event of default under this Agreement.

(b) The Parties agree that the following date is an Essential Project Date and shall be included in the Project Schedule: April 30, 2004 – Delivery of Production Code by CONTRACTOR to CITY for Final Acceptance Test to begin; and

(c) Term of Agreement – This Agreement shall commence on the Execution Date set forth in the introductory paragraph and shall terminate at the end of the fifth year from the date the CITY issues its Certificate of Final Acceptance pursuant to Section 17, unless sooner terminated in accordance with the provisions of this Agreement.

(d) This Agreement may be renewed and extended beyond the original term listed herein, on the same terms and conditions, for up to five (5) additional successive one year renewal periods, upon receipt of both City Council approval, as evidenced by passage of an ordinance, and CONTRACTOR approval. Said renewals shall be effected by a signed writing, executed by the parties, establishing the mutual consent to renew the Contract and the term of the renewed and extended Contract.

(e) CITY expects funding for this Agreement to come from Child Care Development System (CCDS) Local Initiatives Federal Match funds and CCDS automation program funding. CONTRACTOR and CITY herein recognize that the continuation of any contract after the close of any given fiscal year of the City of San Antonio, which fiscal year ends on September 30th of each year, shall be subject to San Antonio City Council. In the event that the San Antonio City Council does not approve the appropriation of funds for this contract, or such funds are not provided for by the grant named herein, or by any subsequent grant, the contract shall terminate at the end of the fiscal year for which funds were appropriated, or the granting entity's fiscal year for which the grant was received, and the parties shall have no further obligations hereunder. Should this Agreement so terminate, CONTRACTOR shall provide CITY with copies of all source and object code developed up until the date of termination, including compilation instructions, and as a condition to delivery of such code shall be paid through the date of termination for all work performed through said termination date based on the last deliverable provided to CITY in accordance with Exhibit A, and on an aggregate percentage of completion basis for any work completed in between deliverables identified on Exhibit A.

### 3. CONTRACT DOCUMENTS

The term "Contract Documents" means the documents, which contain the agreements of the parties with respect to this transaction. The Contract Documents shall consist of this Agreement, the Compensation Schedule (Exhibit A), the Project Schedule (Exhibit B), City's RFP #03-042 (Exhibit C), including the design documents incorporated therein, and CONTRACTOR's original proposal, dated March 28, 2003 (Exhibit D), all of which are attached hereto and are incorporated into this Agreement by this reference.

### 4. ORDER OF PRECEDENCE

In the event of any conflict or inconsistency among the Contract Documents, said conflict or inconsistency shall be resolved by giving precedence to the documents in the following order:

- (a) This Agreement
- (b) Compensation Schedule (Exhibit A)
- (c) Project Schedule (Exhibit B)
- (d) City's RFP #03-042, dated February 14, 2003 (Exhibit C)
- (e) CONTRACTOR's Original Proposal, dated March 28, 2003 (Exhibit D)

### 5. CONTRACTOR'S OBLIGATIONS

- (a) CONTRACTOR shall design, install, and implement a fully operable System, in accordance with the requirements set forth in the Contract Documents and shall develop and furnish the software, and provide the services necessary to accomplish this task. Parties agree that CONTRACTOR shall use Microsoft BizTalk and "Microsoft.NET" programming technology in the software development unless otherwise approved by CITY.
- (b) CONTRACTOR shall meet all Essential Project Dates.
- (c) Upon completion of all acceptance testing and error corrections, CONTRACTOR shall:
  - i deliver the object code and source code for the System to the CITY;
  - ii deliver a programmer's guide to the CITY with instructions on compiling the source code;

iii meet with CITY, if deemed necessary by CITY, for a final knowledge transfer session sufficient to enable CITY to maintain the System independent of CONTRACTOR, not to exceed four hours in length at a time and place set by CITY with no less than one week's notice to CONTRACTOR;

iv deliver an End User's Manual to CITY.

(d) CONTRACTOR shall provide to CITY System Maintenance and Enhancements services as requested by the CITY, from the date of issuance of the Certificate of Final Acceptance and throughout the remainder of the term of this Agreement, and any renewals hereof, to CITY at the fees specified in Exhibit A. Thereafter, cost shall be negotiated. There shall be no fee for configuring the System to include the Collaborators identified in Section 1 during the term of the Agreement. Fees for adding additional Collaborators are identified in Exhibit A.

(e) In providing Support, as defined herein, CONTRACTOR must provide sufficient qualified personnel to be available by telephone and email during CITY's business hours. CONTRACTOR shall respond to inquiries sent by e-mail by either telephone, if a number is provided, or e-mail within 4 hours of receiving the inquiry. CITY must be able to reach CONTRACTOR personnel for answers to inquiries made by telephone at the time of placing the call. CONTRACTOR shall not place a CITY caller on hold for more than 3 minutes.

(f) During the term of this contract, CONTRACTOR shall guarantee sensitivity and responsiveness to changes in CITY's host system environment. If CITY notifies CONTRACTOR of a change to the CITY environment, CONTRACTOR shall send a statement of no impact, or an estimate of the costs for revisions that might need to occur that fall within the scope of enhancements.

(g) The CITY will notify CONTRACTOR at least ninety (90) days prior to installation of an upgrade to the operating system or other CITY software or hardware. CONTRACTOR shall provide upgrades in a timely manner so that CONTRACTOR's System is compatible immediately upon installation of operating system or other CITY software or hardware upgrades into the City's System.

(h) During the term of this Agreement, CONTRACTOR shall provide CITY updated source codes, object codes and programmer's guides as changes are made to the code due to bug fixes, upgrades or enhancements. After the expiration of this Agreement, should the CITY procure enhancements, upgrades, or error corrections, such as patches or bug fixes, to the software from CONTRACTOR, CITY shall be entitled to receive, at no additional cost, the updated object and source codes and programmer's guides. This provision shall survive termination of this Agreement.

(i) CONTRACTOR shall provide 8 hours of end user training to each of the Collaborators identified in Section 1, and to CITY staff, if deemed necessary by the CITY. The Collaborators may select as many persons to attend the training as they may deem necessary, as may CITY for CITY training, provided the entity receiving the training provides the location for the training. CITY may provide the location for training of the Collaborators.

(j) Warranty – CONTRACTOR warrants and represents that the System furnished pursuant to this Agreement is fit for the particular purposes described in the Contract Documents. For the fixed warranty fee set forth on Exhibit A, CONTRACTOR shall provide bug fixes for 90 days from the date of Final Acceptance. Thereafter, CONTRACTOR shall provide additional bug fixes or other corrections to the System, not constituting enhancements or upgrades, throughout the remainder of the term at the hourly rate set forth in Section (e) of Exhibit A. CONTRACTOR shall respond within two business hours of notification by CITY of a software bug with an estimate of the time that will be required to correct the system error, and will provide such correction within the time stated in its Proposal. Parties understand and agree that CONTRACTOR shall not be obligated to provide warranty work or bug fixes if CITY modifies the source code without CONTRACTOR's consent. CITY agrees that it shall, in no event, modify the source code within 90 days following the Final Acceptance.

## 6. CONSIDERATION AND PAYMENT

In consideration of the items and services furnished by CONTRACTOR pursuant to this Agreement, CITY agrees to pay and shall pay CONTRACTOR the fees set forth in Exhibit A, Compensation Schedule, as provided therein.

## 7. DELIVERY

The items to be delivered under the Contract Documents shall be delivered F.O.B. to CITY's ITSD Department at 515 S. Frio Street, San Antonio, Texas 78205.

## 8. SITE PREPARATION

(a) CITY, with the advice and help of CONTRACTOR, shall prepare the space in which the System will be installed. Specifically, CITY shall provide:

- Application server
- Database server
- electrical and mechanical facilities necessary to support the hardware components of the System.
- Web Servers
- Main City sites -- dual load balancing/failover servers
- Staging server
- Microsoft Site Server for the web plant
- Windows 2000 Advanced Operating system
- Discussion Webs Server
- W2K Operating system
- Mainframe Application access
- Mainframe access software
- Intranet Web server
- Domain Name Server -- COSA Primary Authoritative DNS for all domains hosted by the City
- Firewall -- ISA Server Array
- In-line HTTP/FTP filters

(b) CONTRACTOR shall provide a complete diagram of the hardware and software the CITY shall need for testing and production at or prior to the time CONTRACTOR provides the Project Technical Specifications and Project Plan.

(c) CITY shall also provide facilities and equipment resources necessary for training of CITY personnel.

## 9. IMPLEMENTATION OF SYSTEM

(a) It is expected that the implementation of the System will proceed with all due diligence and that the dates set forth in the Project Schedule shall be met. Each party recognizes that the completion of this project within the Project Schedule contemplates and requires the continuing cooperation of each party. CONTRACTOR and CITY shall meet, as necessary, to discuss project status and provide timely responses to issues related to project progress raised in writing by CONTRACTOR or CITY.

(b) CONTRACTOR agrees to utilize only experienced, responsible, and competent personnel in its performance under this Agreement. CONTRACTOR shall assign, to the project, such personnel in sufficient numbers to ensure



the project's on-time completion. CONTRACTOR shall remove from the project any personnel who endanger persons or property or whose continued participation in the project is inconsistent with the best interests of CITY. CONTRACTOR shall be fully responsible to CITY for the performance of its subcontractors and persons either directly or indirectly employed by its subcontractors. CONTRACTOR shall also be fully responsible to CITY for the performance of those persons whom CONTRACTOR employs.

## 10. PROJECT MANAGEMENT

(a) CONTRACTOR shall designate a Project Manager who will direct CONTRACTOR efforts and serve as the primary point of contact for CITY and meet with CITY personnel to obtain general orientation to the project and sources of information. CONTRACTOR's Project Manager shall also be the point of contact to resolve any issues pertaining to System Maintenance and Warranty work. At the time this Agreement is entered into, Greg Schlather shall be the Project Manager for CONTRACTOR. CONTRACTOR shall provide ten calendar (10) days' advance written notice to CITY prior to replacing a project manager or other personnel who are significantly involved in the project, or five calendar (5) days written notice after the change, if the CONTRACTOR could not have reasonably known of the change in advance.

(b) CITY shall designate a Project Manager who will direct CITY efforts and serve as the primary point of contact for CONTRACTOR. CITY's Project Manager shall also be the person solely responsible for authorizing System Maintenance, Enhancements and Warranty work. Any requests for Maintenance, Enhancements or Warranty work shall only be payable if made by CITY's Project Manager. Any written request for such services by CITY's Project Manager shall, as between CITY and CONTRACTOR, be deemed to conclusive evidence of CITY's authorization of the request for such services. The Director of CITY's Department of Community Initiatives ("Director") has the authority to designate a Project Manager for the City and the authority to act as Project Manager, should no other person be designated. At the time this Agreement is entered into, the initial Project Manager(s) for CITY shall be TONY ARREY. Such person is the individual authorized, subject to City Council approval according to statute and CITY policy, to make changes in or redirect the work required by this Agreement. Except as otherwise provided in this Agreement, any change made by CONTRACTOR at the direction of any other person shall be considered as having been made without authority.

## 11. CHANGE ORDERS

(a) Change Orders – Any change orders that become necessary during the term of this contract as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment or supplies to be furnished may be approved by the Director of the Community Initiatives Department, provided that such change orders:

- (i) are made in writing, signed by CONTRACTOR and Director;
- (ii) do not involve an increase or decrease in contract price of more than \$25,000;
- (iii) sufficient funds have already been allocated by CITY or are available to Director to cover any increase in contract price; and
- (iv) in the case of an increase, will not exceed 25% of the original contract price.

(b) Any other change will require approval of the City Council, City of San Antonio.

(c) CONTRACTOR shall make minor changes, at CITY's request or with CITY's agreement in accordance with 11(a)(i) above, to the scope of work, project schedule, or system configuration without any changes being made to the Total Software Price, payment schedule, and/or project schedule. Changes that do not involve an increase in contract price may, however, be made by CITY's designated Project Manager. If CONTRACTOR or City believes that any particular change order, or combination of multiple minor changes, constitutes a major change,

in that it increases or decreases project costs, changes an Essential Project Date, or changes the payment schedule, then such party shall notify the other party in writing that it considers the particular change to be a major change. Such notification shall identify the change and shall set forth the proposed adjustments to the Total Software Price, the Essential Project Date and/or the payment schedule associated with such change. Such major changes and any necessary adjustments must be agreed to by both parties in order for such changes and adjustments to become effective. No charge for extra work or material shall be allowed unless approved in writing, in advance, by the City.

## 12. INSPECTION AND REJECTION

(a) Other than the delivery of the source code for the System, which is governed by Sections 13 through 17 and not by this Section 12, all items, including without limitation components, services, intermediate assemblies, products and data shall be subject to inspection and test by CITY to the extent practicable.

(b) If any items are defective in material or workmanship or otherwise not in conformity with the requirements of the Contract Documents, CITY shall have the right to require their correction or to require replacement. Items that have been rejected or required to be corrected shall be removed or, if permitted by CITY, corrected in place by and at the expense of CONTRACTOR, promptly after notice. Such items shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. CONTRACTOR's failure to promptly remove such items or to promptly replace or correct such items required to be removed, replaced or corrected, shall be an event of default under this Agreement. In addition to, and not in lieu of, any rights that CITY may have under this Agreement or otherwise as a result of such default, CITY may either:

- (i) Accept delivery of the defective items and by separate contract or otherwise correct such items and charge CONTRACTOR costs incurred or deduct from amounts due CONTRACTOR the cost incurred by CITY therefore; or
- (ii) By separate contract or otherwise, replace such defective items and charge CONTRACTOR the total cost incurred by CITY; or
- (iii) Require the delivery of such items at a reduction in price that is equitable under the circumstances.

(c) All inspections and tests by CITY shall be performed in such a manner as not to unduly delay the project. With respect to rejected items, CITY shall not be liable for any reduction in value of such rejected items used in connection with such inspection or test.

(d) Failure to inspect or reject items shall not relieve CONTRACTOR of responsibility for items that are not in accordance with the requirements of the Contract Documents, nor impose any liability on CITY for any reason. Inspection and testing of any item does not relieve CONTRACTOR from any responsibility regarding defects that may be discovered prior to final acceptance or during warranty periods.

## 13. ACCEPTANCE TESTING, CATEGORIES OF PROCESSOR FAILURES

(a) Priority One. Priority one (1) failures are major System failures that render the System completely unusable and/or inoperable, and are considered to be operationally unacceptable by the City's Project Manager.

(b) Priority Two. Priority two (2) failures are major and minor System failures that significantly reduce System operability and usability, and are considered to be operationally unacceptable by the City's Project Manager.

(c) Priority Three. Priority three (3) failures are minor System failures that minimally reduce System operability and usability, and are considered to be operationally acceptable only during the acceptance testing phase by the

City's Project Manager.

(d) Priority Four. Priority four (4) failures are minor System failures and punch list items that have little to no effect on System operability and usability, and are considered to be operationally acceptable only during the acceptance testing period by the City's Project Manager.

#### 14. ACCEPTANCE TESTING, GENERAL

(a) There shall be an initial test to verify that the data links with collaborators have been constructed and that data accurately loads into the data structures. Thereafter, there shall be two (2) acceptance tests for the System as part of the Software Acceptance criteria, a preliminary acceptance test and a final acceptance test. The purpose of the acceptance tests is to provide CITY with a complete and accurate assessment of whether the System meets the requirements set forth in the Contract Documents and any System specifications necessary to meet those requirements, whether contained in the Contract Documents or elsewhere.

(b) The acceptance tests shall fully test each function of the System. CITY reserves the right to test such functions more than once. Additionally, CITY may test such functions singularly, in groups, at the sub-system level, and at the system level. CITY reserves the right to conduct any other inspections or tests to ensure the System meets requirements and specifications.

(c) CONTRACTOR shall define/document the cause of any problem or failure with the System, or any component of the System. CONTRACTOR shall facilitate the resolution of, and shall furnish the corrective action to fix, any such problem or failure of the System. In the event that a problem or failure is caused by a problem with any product or facility provided by CITY, CONTRACTOR's obligations to facilitate resolution and/or furnish the corrective action shall be met by diagnosing the problem and advising CITY on how the problem or failure can be corrected. Nothing set forth in this section 14(c) relieves CONTRACTOR from the obligation of correcting problems or failures caused by any product or facility provided by CONTRACTOR.

(d) CITY shall be the sole judge of whether the System, in the CITY's reasonable discretion, passes an acceptance test. If CITY reasonably determines that the System has not passed an acceptance test, CITY shall provide CONTRACTOR with a written description of the way(s) in which the System was deemed unsatisfactory. This written description shall include a limited but reasonable period of time in which the problem is to be resolved by CONTRACTOR. Notwithstanding the foregoing, CITY shall have no obligation to provide CONTRACTOR with time to correct any problems with the System if CONTRACTOR has missed the Essential Project Date for conducting the failed acceptance test and the System's problems demonstrate that CONTRACTOR has not substantially completed the System.

#### 15. PRELIMINARY ACCEPTANCE TEST

(a) The preliminary acceptance test shall be scheduled promptly after CITY makes a preliminary determination that CONTRACTOR has substantially completed the System. Substantial completion means that CONTRACTOR, in the CITY's reasonable discretion, has completed the System in accordance with the Contract Documents, except for minor punch list items. CONTRACTOR acknowledges that an actual determination of substantial completion cannot occur without system testing. Accordingly, CITY's preliminary determination shall not constitute or be deemed an admission that the System is substantially complete, nor a waiver of CITY's right to require that the System meet all requirements and specifications.

(b) CONTRACTOR shall conduct the preliminary acceptance test under the supervision of CITY and in accordance with any CITY instructions. The preliminary acceptance test shall be conducted pursuant to a test plan

prepared by CONTRACTOR and reasonably approved by CITY. CITY's right to approve the test plan shall include the right to add any items to the test plan necessary to provide CITY with a complete and accurate assessment of whether the System meets requirements and specifications. CONTRACTOR shall provide CITY with an acceptable detailed preliminary test plan in accordance with the date set forth in the Project Schedule, Exhibit C.

(c) The System, to pass the preliminary acceptance test, must operate failure free during the test. Failure free means that the System operates in accordance with the requirements set forth in the Contract Documents and any System specifications necessary to meet those requirements, whether contained in the Contract Documents or elsewhere. Upon completion of the Preliminary Acceptance Test as described herein to the satisfaction of CITY, CITY shall issue a written notice to proceed with the Final Acceptance Test.

## 16. FINAL ACCEPTANCE TEST

(a) The final acceptance test shall be scheduled promptly after CITY reasonably determines that CONTRACTOR has passed the preliminary acceptance test.

(b) The final acceptance test shall be for a period of thirty (30) consecutive calendar days. The final acceptance test shall be a "live" test, which means that it shall include CITY's actual use of the System for the entire thirty-day test period.

(c) CITY shall conduct the final acceptance test. The final acceptance test shall be conducted pursuant to a test plan approved by CITY and CONTRACTOR.

(d) The System, to pass the final acceptance test, must operate failure free during the test. Failure free means that the System operates in accordance with the requirements set forth in the Contract Documents and any other requirements which may not be set forth in the Contract Documents but which are necessary to satisfy those requirements that are set forth in the Contract Documents.

(e) If the System suffers a Priority One (1) or Priority Two (2) failure, as those terms are defined in section 13 of this Agreement, during the final acceptance test period, the test will be stopped. CONTRACTOR shall correct such failures promptly and to CITY's reasonable satisfaction. A new final acceptance test shall begin after such failures have been corrected and shall run for the full thirty-day test period. The System must operate for thirty (30) consecutive calendar days without a Priority One or Priority Two failure.

(f) If the System suffers a Priority Three (3) or Priority Four (4) failure, as those terms are defined in section 13 of this Agreement, during the final acceptance test period, the test will not be stopped. Notwithstanding the foregoing, no written certification of acceptance shall be issued until these failures are corrected.

(g) CITY shall have the right to continue using the System even though the System or any component of the System requires correction and, as a result, no written certification of final acceptance has been issued. CONTRACTOR shall correct the System or System component at a time that is convenient for CITY.

## 17. CERTIFICATION OF FINAL ACCEPTANCE

(a) CITY's final acceptance of the System shall be evidenced by written certifications that CONTRACTOR has completed the System in accordance with the Contract Documents and such System has been inspected, tested and accepted by CITY. The written certifications shall be executed by Director. The System must pass the final acceptance test, in the CITY's reasonable discretion, in order for a written certification of acceptance to be issued.

Additionally, CONTRACTOR must furnish the source code and instructions on how to compile and install the source code into a final product, in order for a written certification of acceptance to be issued.

(b) CITY may issue a written certification of acceptance that is conditioned on CONTRACTOR's completion or correction of certain minor punch list items, and the delivery of the source code as described herein. Such written certification shall specify the date by which such minor punch list items shall be completed or corrected, and the source code and instructions delivered. The failure to complete or correct such minor punch list items and delivery the source code and instructions by the date specified shall be an event of default under this Agreement and shall cause the written certification of acceptance to be revocable by CITY. A conditional certificate of acceptance shall not, however, give rise to a duty to pay, as may be provided for in Exhibit A upon issuance of a final certificate of acceptance. Such a duty to pay on the part of CITY, as stated in Exhibit A, shall only arise upon issuance of a final, unconditional certificate of acceptance.

## 18. INDEPENDENT CONTRACTOR

Each party to this Agreement will be acting in its own capacity in performance of this Agreement. The employees or agents of one party shall neither be nor shall they represent themselves as employees or agents of the other party for any purpose whatsoever. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships, between the parties hereto. This provision shall survive termination of this Agreement.

## 19. RESERVED

## 20. CONFIDENTIALITY

(a) CONTRACTOR shall regard all information and data provided by CITY or a Collaborator as confidential information. CONTRACTOR shall not release the information and data to outside parties without the prior written consent of CITY, or the Collaborator, if the information is that provided by the Collaborator. Further, CONTRACTOR will only disseminate the information to its employees or subcontractors that have a need to know. CONTRACTOR may release such information and data to subcontractors, provided, however, that the information and data released is necessary to subcontractor's performance on the project and provided further that the subcontractor agrees not to release such information and data without the prior written consent of CITY, or the Collaborator, if the information is that provided by the Collaborator.

(b) CITY shall have the right to review and investigate CONTRACTOR staff, including subcontractors, as CITY may deem necessary to protect the security of CITY's information, data, and facilities. CITY shall have the final authority, based on security reasons, as to whether any individual or entity may perform work under this Agreement. CONTRACTOR shall secure any releases of information from its staff as CITY may require.

## 21. COMPLIANCE WITH APPLICABLE LAWS, NONDISCRIMINATION, SMALL/Minority/WOMEN OWNED BUSINESS PROGRAM.

(a) CONTRACTOR shall comply with all applicable laws, ordinances, rules, and regulations, including without limitation federal, state, and municipal, relating to or affecting the work under this Agreement. CONTRACTOR shall secure and obtain any and all permits, licenses, and consents and pay all charges, taxes and fees as may be necessary in connection with the project.

(b) CONTRACTOR hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

(c) CONTRACTOR shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Agreement, thereby meeting the percentages for participation of those groups as submitted in its proposal. CONTRACTOR's SBEDA plan, as submitted with CONTRACTOR's proposal. CONTRACTOR shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Agreement, and shall remain in compliance throughout the term of this Agreement. CONTRACTOR further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Agreement, as may be approved pursuant to this Agreement, which will meet the percentages submitted in its proposal.

(d) CONTRACTOR shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that CONTRACTOR is not in compliance with this article, City shall give notice of non-compliance to CONTRACTOR. CONTRACTOR shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Agreement, for which this Agreement may be terminated in accordance with Article VII. Termination.

(e) In all events, CONTRACTOR shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 96754, and any amendments thereto. Said ordinance is incorporated herein for all purposes, as if fully set forth herein.

## 22. OWNERSHIP OF WORK PRODUCT, DELIVERY OF CODE, AND ROYALTY RIGHTS

(a) Intellectual Property Rights – Ownership by CONTRACTOR. CONTRACTOR shall be the sole and exclusive owner of all Work Products, and of all copyright in such Work Products. Ownership of Work Products will inure to the benefit of CONTRACTOR from the date of creation or of fixation in a tangible medium of expression, as applicable, of such Work Products.

(b) Royalty Free License for CITY. CONTRACTOR grants CITY a perpetual, paid-up, non-exclusive, non-transferable license to use the licensed software for the CITY's business processes and data processing operations, in conjunction with identified Collaborators and those to be added in the future for use of the system as contemplated hereunder and for other uses of the System for which the CITY hosts the System on its own servers. CITY understands and agrees that the license granted hereunder does not authorize the CITY to grant licenses to Collaborators or permit Collaborators to download the software onto servers of Collaborators. The nature of the System is such, however, that it does require Collaborators to use the System for it to be functional and meet the purpose for which it is designed, while hosted on CITY's servers, and the license granted to CITY hereby does permit such use. In addition, CITY shall have the right to present the product to any interested party outside the Alamo Workforce Development Area ("AWDA"), however, CONTRACTOR shall retain the right to license the product. CONTRACTOR's license shall include the right of CITY to modify the source code for CITY's own use.

(c) Royalties Paid to CITY. CONTRACTOR shall market and license the Single Portal Software System to other interested parties and shall compute and pay to CITY a royalty in the amount of ten percent (10%) of the total of all revenues received by CONTRACTOR from parties other than CITY. CONTRACTOR shall pay said royalties no later than 30 days from receipt of the fee for which the royalty is payable. If CITY initiates the contact with an interested party, CONTRACTOR shall pay CITY a royalty in the amount of 15% of all revenues. CONTRACTOR shall pay any royalties due CITY hereunder within 30 days of receipt of same.

(d) Transfer of Ownership to CITY. If CONTRACTOR is sold, changes majority ownership, undergoes a corporate restructuring, ceases to do business for any reason, or files for bankruptcy, or abandons sales or support of Work Product, CITY shall become the sole and exclusive owner of all Work Products and of all copyright in such Work Products, unless CITY consents to the inclusion of the Work Products in the assets to be transferred or consents to such transaction or event, which consent shall not unreasonably be withheld. In the event the consent of the CITY is not obtained because the CITY reasonably withheld its consent, Ownership of Work Products, including intellectual property rights, shall inure to the benefit of CITY, in such event, and ownership of the intellectual property rights, including the source code and all work products, shall automatically vest in CITY under such circumstances, unless the City agrees otherwise in writing. Furthermore, if this contract is validly terminated by CITY prior to completion of work in accordance with the terms of this Agreement, all Work Products, including copyrights, automatically become the sole property of CITY. CONTRACTOR shall not sell, assign, pledge, transfer or convey, in whole or in part, its copyright in the Work Product or System, other than by license as described herein, without the prior written consent of CITY, which shall not be unreasonably withheld. Any such sale, assignment, pledge, transfer or conveyance shall be void ab initio. CITY's consent may be conditioned on the execution of a novation to ensure CITY's right to continued receipt of royalties or to a percentage of the revenue recognized from such sale, assignment, pledge, transfer or conveyance.

In the event that the consent of the CITY to a transaction described above is reasonably withheld or the contract is validly terminated by the CITY prior to completion of work, CONTRACTOR hereby assigns and agrees to assign to CITY exclusively all right, title, and interest in and to the Work Products, and to the copyright without further consideration, free from any claim. CONTRACTOR shall obtain similar written undertakings from its employees and consultants who will perform services relating to this Agreement, so as to ensure CITY's ownership of the Work Products in such event. CONTRACTOR shall promptly deliver the Work Products to CITY and shall execute and deliver any and all lawful patent, copyright, or other applications, assignments, and other documents that CITY requests for protecting the Work Products, whether in the United States or any other country. CITY shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Products, and CONTRACTOR shall cooperate fully and in a lawful manner, at the expense of CITY, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Products. Notwithstanding anything to the contrary, CONTRACTOR shall retain a perpetual, non-exclusive, royalty free, license in any rights transferred to City under this agreement.

(e) Derivative Works. CITY's rights to royalties, and to ownership of the Work Product, including copyrights, as described in this Section 22 – Ownership of Work Product, Delivery Of Code, And Royalty Rights, shall extend to and apply to any and all derivative works in any form or media, whether now known or unknown. Regardless of ownership, the CITY, further, shall have the right to create derivative works, including but not limited to the right to make derivative works that provide the same or enhanced functionality and shall have the right to use the completed projects in other forms or media of whatever type. Such forms and media shall include any form or media whether now known or unknown. Should CONTRACTOR develop an enhanced version of the Work Product, or a new version or derivative of the Work Product for a third party that contains improved or enhanced features, upon mutual agreement of the parties, which agreement CONTRACTOR shall not unreasonably withhold, CITY may waive the royalty due to CITY from the license fees paid by said third party and accept, instead, a license to use the enhanced version, new version or derivative product, a copy of the source code, object code and instructions for compilation of the code. Any such license shall carry with it the same terms and conditions as the original license conveyed by CONTRACTOR herein.



(f) CONTRACTOR shall furnish sufficient documentation to the reasonable satisfaction of the CITY, that the CONTRACTOR is authorized to convey such rights to the CITY as are required herein. To the extent CONTRACTOR is authorized via third party vendors, CONTRACTOR shall furnish licenses to use any icons, artwork, or graphics and it shall furnish model releases from any recognizable persons or other entities as may be necessary for the CITY to exercise the rights granted. CONTRACTOR shall obtain written acknowledgments, licenses, assignments, transfers or conveyances from its employees, subcontractors and consultants who perform services relating to this Agreement confirming that CONTRACTOR either owns the copyright in the work product or that CONTRACTOR has the authority to license the work product and grant the rights to the City of San Antonio as set forth in this Agreement.

(g) Property of CITY. Nothing herein shall be construed to grant any right or license to CONTRACTOR in or to any material provided to CONTRACTOR hereunder by CITY including, but not limited to any software, data, designs, business plans, financial information, User data or information and, Confidential Information of CITY, other than the right to use such material solely on behalf of CITY in accordance with the terms hereof. All of the foregoing materials, including, but not limited to, any and all copyrights, trademarks, service marks, and trade names related thereto, are and shall remain the property of CITY.

(h) Adverse Action. Each of the Parties covenants to perform its responsibilities under this Agreement in a manner that does not willfully infringe, or constitute willful infringement or misappropriation of, any U.S. patent, trade secret, copyright, or other intellectual property right of any third party, or a violation of the other Party's software license contracts or intellectual property rights disclosed to or known by such Party.

(i) The CONTRACTOR agrees to furnish computer program source code and executable object code for all modules of the software created by the CONTRACTOR and sold to the CITY including baseline, modified and custom software. CONTRACTOR shall specify which tools to use and provide step-by-step instructions on how to compile and install the source code into a final product. CONTRACTOR agrees to disclose to CITY, all development details including, but not limited to hardware and software that is used in the development, operation and maintenance of this product. Included with CITY's license from CONTRACTOR, shall be the right to unlimited access to edit and manage the product, including source code.

(j) The CONTRACTOR represents that the CONTRACTOR has valid rights for the sale, resale, licensing, use and distribution of all third party software products proposed.

(k) The CONTRACTOR agrees that the CITY may use the software proposed in executing the CITY business processes for use of the System in which the CITY hosts the System. This right includes, but is not limited to use by third parties necessary to complete the CITY's business. Third parties may include current and future Collaborators in the AWDA, vendors, citizens, customers, auditors, consultants and CITY organization units including, but not limited to agencies, boards and commissions, and quasi CITY entities (like City Public Service Board, San Antonio Water System).

(l) The CONTRACTOR agrees that the CITY may copy, install and operate the software modules on such server systems as the CITY has procured for such purposes including production servers, production high-availability backup server systems, test and development systems, data server systems, reporting servers and other server systems as required to conduct CITY business.

(m) CONTRACTOR's application software license will permit the CITY to make and maintain copies of the software for backup and disaster recovery purposes.



(n) The CONTRACTOR agrees that the CITY may install and operate the software modules temporarily on back-up servers for disaster recovery or disaster recovery testing purposes.

(o) The CONTRACTOR agrees that the CITY may install and operate the software modules on such client workstations as the CITY has installed for such purposes.

(p) CONTRACTOR will permit the CITY to copy and duplicate the CONTRACTOR's non-computer program copyrighted materials, in whole or in part, for demonstration, training and user documentation purposes without restriction or additional compensation.

(q) The CITY expects and CONTRACTOR agrees that modifications made by the CONTRACTOR to the baseline software in response to a CITY business requirement will be incorporated into the CONTRACTOR's baseline software and subsequently supported and maintained by CONTRACTOR in accordance with the terms of this Agreement.

(r) The provisions of this entire Section 22 shall survive termination of this agreement.

## 23. RISK OF LOSS

CONTRACTOR agrees to bear all risks of loss, injury, or destruction of all items delivered under this Agreement, which occur prior to the CITY's issuance of the written certification of final acceptance of the System. Any such loss, injury or destruction shall not release CONTRACTOR from performing any obligation under this Agreement, unless such loss, injury or destruction is due to negligence of CITY.

## 24. INDEMNIFICATION.

(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 AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, 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 AGREEMENT.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The 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.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

(b) CONTRACTOR will indemnify the CITY and will hold CITY harmless from any and all claims that the System or any part thereof infringes upon the intellectual property rights of any third party. CONTRACTOR will promptly secure the necessary rights for the CITY to continue the lawful use of the System and defend, at its expense, any action brought in a United States court of law against CITY which alleges that work(s) supplied by CONTRACTOR hereunder infringe any trademark or duly issued patent or copyright and shall pay all damages and costs finally awarded against CITY which are directly attributable to such infringement. CITY shall give CONTRACTOR prompt written notice of such claim, and promptly furnish a copy of all communications, notices and other acts relating to such claim. CITY shall give CONTRACTOR reasonable assistance (at CONTRACTOR'S expense) necessary to defend or settle such claim; *provided, however*, that CITY shall have the right to participate in the defense of any resulting suit or proceeding at its expense and through counsel of its choosing. CONTRACTOR shall not be obligated to defend, or be liable for any costs and damages, if the infringement arises directly or indirectly out of or from:

- (i) compliance with any of CITY specifications or requirements,
- (ii) CITY'S combination with or an addition to products not manufactured and developed by CONTRACTOR,
- (iii) CITY's modification of the Programs after delivery by CONTRACTOR.

## 25. BREACH; REMEDIES

(a) If CONTRACTOR fails to perform any of its material obligations under this Agreement and, except for Software Support, if such failure is not corrected within 30 days of notification of its failure to perform ("cure period"), CONTRACTOR shall be in breach of this Agreement. However, if CONTRACTOR fails to meet the Essential Project Date stated in Section 2(b), through no fault of CITY, no cure period shall be provided and CONTRACTOR shall be in breach.

If CONTRACTOR is in material breach of this Agreement (including breach of any applicable cure period), CITY shall have the option(s) to avail itself of any remedy or remedies provided herein or at law. Pursuit of one remedy shall not constitute a waiver of any other remedy available to CITY. In addition, CITY shall specifically

have the rights to terminate this Agreement in whole or in part, recover any sums paid to CONTRACTOR, and, if operationally necessary for the public health or safety, to seek cover at CONTRACTOR's expense pursuant to section 12 of this Agreement.

(b) If CITY fails to perform any of its material obligations under this Agreement and if such failure is not corrected within thirty days of notification of its failure to perform, CONTRACTOR shall have the options to cease performance or avail itself of any remedy or remedies provided herein or at law. Pursuit of one remedy shall not constitute a waiver of any other remedy available to CONTRACTOR. HOWEVER, because of the public health and safety implications involved in the discontinuation of the System, in no event shall CONTRACTOR be allowed to unilaterally disable the System, any of its components [modules] or any other CITY system or function without permission of the City Manager or through due process of law.

(c) Further, the decision of the CITY to discontinue any Maintenance described in this Agreement shall not terminate any rights CITY has previously obtained for which acceptance and payment had been completed.

## **26. UNDISCLOSED FEATURES.**

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

## **27. INSURANCE REQUIREMENTS AND PERFORMANCE BOND**

(a) Prior to the commencement of any work under this Agreement, CONTRACTOR shall furnish an original completed Certificate(s) of Insurance to the CITY's Community Initiatives Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the CITY's Community Initiatives Department and the City Clerk's Office, and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

(b) The CITY reserves the right to review the insurance requirements of this section during the effective period of this Agreement and any extension or renewal hereof; and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

(c) CONTRACTOR's financial integrity is of interest to the CITY; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension thereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) 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. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	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  \$50,000
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

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

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

- Name the CITY and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies.
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.
- CONTRACTOR will notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

<b>City of San Antonio</b>	<b>With a copy to: City of San Antonio</b>
<b>Department of Community Initiatives</b>	<b>CITY Clerk's Office</b>
<b>P.O. Box 839966</b>	<b>P.O. Box 839966</b>
<b>San Antonio, Texas 78283-3966</b>	<b>San Antonio, Texas 78283-3966</b>

(f) If CONTRACTOR fails to maintain the aforementioned insurance, 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 the contract; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have and is not the exclusive remedy for failure of CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONTRACTOR to stop work hereunder and/or withhold any payment(s) which become due, to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

(g) CONTRACTOR's insurance shall be deemed primary with respect to any collectible insurance or self insurance carried by the CITY for liability arising out of operations under the contract with the CITY.

(h) CONTRACTOR shall provide a performance bond made payable to the City of San Antonio, executed by a corporate surety acceptable to CITY who is licensed pursuant to the Texas Insurance Code in the amount of the 20% of the total fee for software, shown on Exhibit A. Said bond must be in a form acceptable to CITY. Said bond shall further provide the obligee for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this contract. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be executed and delivered to CITY prior to commencement of work under this contract. At CONTRACTOR's election, as an alternative to a performance bond, CONTRACTOR may provide as equivalent security to the CITY an irrevocable standby letter of credit, naming the CITY as beneficiary, in the amount of 20% of the total fee for software shown on Exhibit A. Said letter of credit must be in a form acceptable to CITY and delivered to CITY prior to the commencement of work under this contract.

## **28. REPORTS, RECORDS RETENTION, AND AUDIT**

(a) CONTRACTOR shall furnish CITY a written report on a quarterly basis stating:

- i the total fees received with respect to the System, excluding those fees received from City, for the preceding quarter;
- ii the royalties due to CITY for such quarter; and
- iii the amounts paid in respect thereof.

(b) CONTRACTOR shall maintain written records sufficient to document the calculation of such royalties and the licenses upon which they are based in sufficient detail to enable CITY or its designated representative to compute the amount of royalties payable to CITY and shall permit such records to be examined by CITY or its designated

representative as often as CITY deems necessary, upon no less than three business day's notice of intent to conduct such examination. Any such examination shall be conducted during normal business hours and, together with any confirmation proceeding as provided below, shall be conducted at the expense of CITY, unless a discrepancy of at least five percent (5%) in underpayment of such royalties is present and confirmed by an independent review of such examination by a certified public accountant chosen by agreement of the Parties. If the discrepancy is confirmed, CONTRACTOR shall pay CITY the amount of the discrepancy, together with interest at the rate of 10% per annum or the maximum rate allowable by law, whichever is less, and the expenses of such examination and confirmation.

(c) CONTRACTOR agrees that CITY and its Grantor ("Grantor" meaning the entity funding this Agreement), in addition to the audit provision pertaining to royalties contained in Section 28(b) above, shall, until the expiration of four (4) years after final payment under this Agreement, have access to and the right to examine, audit, and copy, if necessary, any books, documents, papers and records of the CONTRACTOR involving transactions relating to this Agreement, at the auditing entity's expense. CONTRACTOR agrees that CITY shall have access during normal working hours to all necessary CONTRACTOR facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section.

CONTRACTOR further agrees to include in its subcontractor agreements hereunder a provision to the effect that subcontractor agrees that CITY and its Grantor shall, until the expiration of four (4) years after final payment under the subagreement, have access to and right to examine any books, documents, papers and records of such subcontractor, involving transactions to the subagreement, and further that CITY shall have access during normal working hours to all subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this article.

Nothing herein shall be construed as limiting CITY's rights of access to any examination of books, documents, papers and records, which may exist independently of this contract provision.

(d) CONTRACTOR may, during the retention period stated in Section 28(c), at its own expense, deliver all records described herein to CITY rather than providing storage for same. In addition, CONTRACTOR shall, during the retention period stated in Section 28(c), deliver all said records to CITY, at its own expense, rather than destroying same, should any event precipitate such destruction, such as ceasing business operations.

## 29. ASSIGNMENTS AND SUBCONTRACTING.

Except as otherwise stated herein, CONTRACTOR may not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the San Antonio City Council, as evidenced by an ordinance passed and approved therefore. CITY's consent shall be deemed made for the CONTRACTOR's engaging Command Technologies, Inc. and BIF Technologies, Inc. as subcontractors for this Agreement. As a condition of such consent, CONTRACTOR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor CONTRACTOR, assignee, transferee or subcontractor. Any 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 contract shall be the responsibility of CONTRACTOR. CITY shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of services or payment of fees. Any references in this contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the San Antonio CITY Council.

Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONTRACTOR assign, transfer, convey,

delegate, or otherwise dispose of any part of, or all of its right, title or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles and interest of CONTRACTOR shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by CONTRACTOR shall in no event release CONTRACTOR from any obligation under the terms of this contract, nor shall it relieve or release CONTRACTOR from the payment of any damages to CITY, which CITY sustains as a result of such violation.

CONTRACTOR's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with CONTRACTOR arising from or in relation to this Agreement, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this Agreement. CONTRACTOR shall indicate this limitation in all contracts with approved subcontractors.

CONTRACTOR agrees to notify CITY of any changes in ownership interest greater than 50%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this contract, any such change of ownership interest or control of its business entity may be grounds for termination of this contract at the sole discretion of CITY.

### 30. AMENDMENT OR MODIFICATION.

This contract, including all exhibits and attachments identified herein, together with its authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this contract shall be binding, unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto, and approved by ordinance passed by the San Antonio City Council, except as otherwise provided in Section 11 - Change Orders.

### 31. CITY ETHICS CODE

(a) CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

(b) CONTRACTOR warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. CONTRACTOR further warrants and certifies that it has tendered to the City an accurate Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

(c) CONTRACTOR warrants and certifies, and this Contract is made in reliance thereon, that it has tendered to the City an accurate Litigation Disclosure Statement.

### 32. SECTIONS THAT SURVIVE TERMINATION.

In addition to the provisions previously designated, the obligations of the parties to protect propriety and confidential information and the obligation of CONTRACTOR to indemnify and hold the CITY harmless for



copyright, patent or trademark infringement contained in the Contract shall also survive termination of this Contract.

### 33. NOTICES

(a) Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below, or to such other address as either party may from time to time designate in writing.

Notices, except for notices of System outages and certain insurance notices, shall be addressed as follows:

If to the City of San Antonio:	If to the CONTRACTOR:
Dept. Of Community Initiatives Att: Tony Arrey 115 Plaza de Armas, Ste 210 PO Box 839966 San Antonio, Texas 78204	Carolyn Labatt Computer Solutions 814 Arion Parkway, Suite 101 San Antonio, Texas 78216

(b) Notices of System outages shall be sent and received as set forth in the applicable support provisions.

(c) Notices regarding insurance coverages shall be sent and received as set forth in Section 27 of this Agreement.

### 34. GENERAL PROVISIONS

#### (a) CHOICE OF LAWS, VENUE

This Agreement shall be construed under the laws of the State of Texas without regard to its choice of laws provisions and venue for any litigation shall be in Bexar County, Texas.

#### (b) SEVERABILITY

If any term or provision of this Agreement, or the application thereof shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

#### (c) CONSTRUCTION OF TERMS

The headings preceding the text of the sections hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this Agreement so requires.

#### (d) FORCE MAJUERE

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then such party shall be excused from



performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

**CITY:**

City of San Antonio

By: \_\_\_\_\_

Title: City Manager

Date:

**CONTRACTOR:**

Great South Texas Corporation

By: Carolyn H. Salvatt

Title: President

Date: 6/19/03

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

## EXHIBIT A

### COMPENSATION SCHEDULE

(a) Total Fee for Software. CITY shall pay CONTRACTOR Seven Hundred Forty-eight Thousand dollars (\$748,000.00) as the total fee for the software and services provided in accordance with the Contract Documents ("Total Software Price") in accordance with the payment schedule provide in (b) below. With the exception of the fees specifically set forth below for Maintenance, Enhancements and Warranty, no additional fees or expenses of CONTRACTOR shall be charged by CONTRACTOR nor be payable by CITY. The parties hereby agree that all compensable expenses of CONTRACTOR have been provided for in the total fee for software to CONTRACTOR as specified in this section (a). The CITY is tax exempt under Texas Law and will furnish appropriate documentation of its tax-exempt status upon request. Consequently, the Total Software Price shall not include any sums for sales or use taxes.

(b) Payment. CONTRACTOR, for the Total Software Price, shall be paid a percentage of the Total Software Price in accordance with the following payment schedule:

Project Milestone	Payment
Delivery of Project Technical Specification and Project Plan	5%
Delivery of Formal Test Plan Document	10%
Delivery of Prototype User Interface for SPE Website Available for Review	10%
Delivery of Code for BizTalk Messaging (data interaction) Available for Unit Testing	15%
Delivery of Code for Eligibility and Enrollment Module Available for Unit Testing	15%
Delivery of SPE Website Available for Unit Testing	20%
Completion of Preliminary Testing	15%
Certificate of Final Acceptance Issued by Director	10%

(c) Invoicing for Software Fee. CONTRACTOR shall submit an invoice for each payment. Schedules and amounts of invoices shall be determined in accordance with the payment schedule set forth in sub-section (b) above. CITY shall pay CONTRACTOR within the time limits imposed by Texas law on municipalities.

(d) Warranty Fees. After CITY issues the Certificate of Final Acceptance, the CITY shall pay CONTRACTOR a Fixed Warranty Fee of Eighteen Thousand Five Hundred Dollars (\$18,500.00) for the 90 day warranty described in Section 5(j) of the Agreement, payable within 30 days of receipt of an invoice therefore. After the expiration of the initial 90 day warranty period, CITY shall pay CONTRACTOR at the rate of \$90 per hour, billed in half hour increments, for additional "bug fixes" for the remainder of the term.

(e) Payment for Upgrades and Enhancements. After CITY issues the Certificate of Final Acceptance, the CITY shall pay CONTRACTOR at the rate of \$90.00 per hour for Upgrades and for Enhancements for the term of the Agreement.

(f) Payment for Support. After CITY issues the Certificate of Final Acceptance, the CITY shall pay CONTRACTOR a fixed Support fee of \$4,800 for six months of Support Services. In exchange for said payment, CONTRACTOR shall provide up to 96 hours of Support Services described herein during said initial six month period, as required by CITY. CITY shall pay CONTRACTOR at the rate of \$50.00 per hour for Support Services in excess of the 96 hours during the initial six month period and throughout the remainder of the term. CONTRACTOR shall provide said Support Services as described in this Agreement.

(g) Invoices. CONTRACTOR shall issue an invoice to CITY for payment of each of the fixed fees described in Sections (d) and (f) above. To receive payment for additional Support, Upgrades, Enhancements, and "bug fixes" after the initial 90 day warranty period, CONTRACTOR shall submit monthly invoices detailing the services provided, the hours billed and the billing rate. CONTRACTOR shall comply with reasonable requests made by the CITY to include additional information on the invoice. All invoices submitted, regardless of type, shall reflect the initial Purchase Order Number issued to CONTRACTOR at the beginning of the term of the Agreement. CITY shall pay CONTRACTOR within the time limits imposed by Texas law on municipalities.