

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
DEPARTMENT OF COMMUNITY INITIATIVES**

TO: Mayor and City Council

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

THROUGH: Terry M. Brechtel, City Manager

COPIES: Frances A. Gonzalez, Assistant to the City Manager; Finance Department; Office of Management and Budget; City Attorney's Office; File

SUBJECT: AUTHORIZING THE EXECUTION OF A CONTRACT WITH SAN ANTONIO FOOD BANK, INC.

DATE: October 30, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a \$270,000 contract with San Antonio Food Bank, Inc. for the period October 1, 2003 to September 30, 2004 to expand food security to senior residents through Project HOPE.

Staff recommends the approval of this ordinance.

BACKGROUND INFORMATION

For 22 years, San Antonio Food Bank, Inc. (SAFB) has served as a clearinghouse by receiving and storing donated food, produce and other grocery products. The SAFB acquires and distributes the food and related products to over 300 charitable organizations that provide for needy individuals and families in 16 counties.

In FY 2003, the SAFB sought support from the City of San Antonio by requesting Human Development Services Funds to initiate the Healthy Options Program for the Elderly (HOPE) project. Through its Project HOPE program, SAFB acquires and distributes nutritious food and related products to low-income seniors, which promote the health, safety and welfare of all seniors residing in the City. City Council subsequently approved a total of \$37,857 in Human Development Service Funds for the project.

Through Project HOPE, SAFB partnered with Comprehensive Nutrition Program (CNP) senior nutrition sites within the City of San Antonio. With the help of the center managers and site volunteers, needy citizens were identified and qualified using the USDA income eligibility

levels, which require applicants to be at 185% of the federal poverty guideline or with a household income of \$34,040 or below for a family of four. After enrollment, seniors begin receiving a monthly allotment of food. CNP locations are the sole distribution sites. Seniors do not have to be registered with CNP to obtain services from Project HOPE, but do have to be 60 years or older. Food from Project HOPE is also distributed to homebound seniors.

Once per month, SAFB delivers bags and boxes of food to each enrolled senior to supplement their existing diet. Seniors currently receive approximately 15-20 lbs. of food with an assortment of breads and pastries, fresh produce, refrigerated and frozen products, dry goods and beverages. In FY 2003, SAFB provided over 227,000 lbs. of food to an average of 2,050 unduplicated seniors per month through Project HOPE.

POLICY ANALYSIS

Upon recommendation from the Mayor's Hunger and Homelessness Task Force, \$270,000 was earmarked in the City's FY 2003-2004 Annual Consolidated Operating Budget to expand services provided by Project HOPE. City Council authorized the appropriation and expenditure of the funds in its adoption of the FY 2003-2004 Budget on September 18, 2003 (Ordinance #98181).

Funding in the one-time amount of \$270,000 will enhance food security to seniors by providing 25 lbs. of food, twice per month to a minimum of 3,000 seniors. Each dollar leveraged garners \$20 worth of food for seniors. Project HOPE, working in partnership with the City's Comprehensive Nutrition Project (CNP), ensures that seniors receive adequate supplemental food security to enhance their nutritional health and well-being. As part of this community partnership, SAFB will also be encouraging eligible Project HOPE participants to enroll in Food Stamps to further enhance food security for those seniors most in need.

FISCAL IMPACT

Funding for this contract is to be paid through the City's General Fund.


COORDINATION

The Department of Community Initiatives has coordinated activities with the San Antonio Food Bank, Inc., City Attorney's Office, Finance Department, Office of Management and Budget, and the Mayor's Hunger and Homelessness Task Force.


SUPPLEMENTARY COMMENTS

City of San Antonio Discretionary Contract Disclosure Ethics Form is included as Attachment A.


Dennis J. Campa, Director
Department of Community Initiatives


Frances A. Gonzalez
Assistant to the City Manager

Approved:


Terry M. Brechtel
City Manager

STATE OF TEXAS

COUNTY OF BEXAR

DELEGATE AGENCY CONTRACT

Attachment I

CITY OF SAN ANTONIO

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 98181 dated September 18, 2003, and Ordinance No. _____ dated _____ and the San Antonio Food Bank, (hereinafter referred to as "Contractor")

WITNESSETH:

WHEREAS, the Department of Community Initiatives is designated as the representative agency of San Antonio and Bexar County; and

WHEREAS, the City has provided certain funds from the City of San Antonio General Fund (hereinafter referred to as General Fund) for Family Strengthening and Human Development related services; and

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

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

The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Executive Summary/Statement of Work, Balanced Scorecard Performance Plan, and Budget, attached hereto and incorporated herein as Attachment I.

II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2003 and shall terminate on September 30, 2004.
- 2.2 The Contractor understands that this contract will terminate as provided in Section 2.1, or sooner as provided in Article XIII. There is no guarantee of renewal for the following fiscal year.

III. CONSIDERATION

- 3.1 In consideration, the City will reimburse Contractor for expenses incurred in accordance with the budget approved by City Council in Ordinance No. 98181 and _____. It is specifically agreed that reimbursement hereunder shall not exceed the amount of \$ 270,000.00.
- 3.2 The funding level of this contract is based on the allocation awarded to the Department of Community Initiatives by the City of San Antonio. The allocation is based on an appropriation for the Project Hope and Department of Community Initiatives receipt of allocation through the General Fund. The budget to this contract may be adjusted to correspond to the actual allocation awarded.

IV. PAYMENT

- 4.1 Payment and financial transactions shall be as follows:
- (a) reimbursement of eligible expenses as determined by the City's Department of Community Initiatives shall be made monthly upon receipt of billing from the Contractor;

- (b) all requests for reimbursement shall be accompanied with documentation as may be required by the City's Department of Community Initiatives;
- (c) all vendor bills received by the Contractor will be settled within ten (10) working days of billing;
- (d) no budget line item shifts of funds may be made by the Contractor without the prior written approval of the City's Department of Community Initiatives;
- (e) the final request for payment to the City must be submitted not later than forty-five (45) days after the contract end date. All vendors must be notified by Contractor that bills, adjustments, etc., presented after fifteen (15) days from the date of termination will not be honored for payment;
- (f) all expenditures by Contractor or any approved subcontractor exceeding \$3,000.00 must be pre-approved in writing by the Department of Community Initiatives and if pre-approved, must be made in accordance with all applicable federal, state and local laws, rules and regulations including all bidding requirements that City would be required to perform under Chapter 252 of the Local Government Code;
- (g) an accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the project should the project terminate the next day is mandatory. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged. The City's Office of Internal Review should review Contractor's system of internal administrative and accounting controls prior to the release of funds;
- (h) all records and files on the Project funded by this Agreement will be open for inspection and audit at any reasonable time during the term hereof by representatives of the City or the State or Federal Government, and shall continue to be so available for a period of three (3) years after the termination date hereof; If at the end of three (3) years, there is litigation or if the audit report covering such agreement has not been accepted, the Contractor shall retain the records until the resolution of such litigation or audit.
- (i) Contractor will establish an account in a commercial bank as a depository for receipt and disbursement of funds provided hereunder;
- (j) the City shall not be obligated to any third parties (including any subcontractors of the Contractor);
- (k) Contractor is liable for complying with all local, State and Federal laws including, but not limited to:
 - (1) being a legal entity
 - (2) possessing tax exempt status from Internal Revenue Service and State Comptroller Office, where applicable
 - (3) Worker's Compensation
 - (4) Unemployment Insurance
 - (5) timely deposits of payroll deductions
 - (6) filing of Return or Organization Exempt from Income Tax, Form 990 or 990T, Quarterly Tax Return, Form 940, Form W-2, Form 1099 for individuals who received compensation other than wages, such as car allowance, contract or consultant work, etc.
 - (7) minimum wage and discrimination laws
 - (8) Occupational Safety and Health Act regulations;
 - (9) all bidding requirements that the City would be required to perform under Chapter 252 of the Local Government Code

- (l) All program income earned during the contract period must be reported to the City's Department of Community Initiatives. The program income shall be retained by the agency and in accordance with this contract be:
 - (1) committed to the agency by approval of the City's Department of Community Initiatives and be used to further eligible program objectives; or
 - (2) deducted from the total agency budget for the purpose of determining the net costs on which Federal Share of Costs will be based;
- (m) at the termination of the contract, all unclaimed (30 days or older) salaries or wages must be returned to City in the following form:
 - (1) a cashier's check for the aggregate amount made payable to the City of San Antonio
 - (2) a listing showing the Social Security number, full name, last known complete address and the amount for each person involved;
- (n) notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given the Contractor for failure to comply with the letter or spirit of this Agreement. Specifically, the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Agreement or has not obtained satisfactory accomplishment of projected program goals; and
- (o) equipment or major non-recurring expenses (\$200.00 or more) may not be purchased without prior written consent of the City during the last four (4) months of the contract.
- (p) Contractor costs or earnings claimed under this contract may not be claimed under another contract or grant from another agency.
- (q) Contractor shall establish and utilize a cost allocation methodology and plan which assures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the programs funded by this Contract. The cost allocation plan and supportive documentation shall be included in the audit of Contractor's program.
- (r) Contractor certifies that public funds are used only for activities that are in addition to those which would otherwise be available in the area in the absence of such funds.
- (s) Upon completion or termination of this project, any unused funds, rebates or credits must be returned immediately upon receipt to the City.
- (t) Ownership and possession of permanent, non-expendable property, which is purchased under this contract, shall, upon termination of this contract, revert to and become the property of the City. All non-expendable property must be insured against fire, loss and theft. All motor vehicles are required to have liability insurance.

V. ADMINISTRATION OF CONTRACT.

5.1 This contract shall be administered in accordance with the following (as applicable to the organization):

- (a) Office of Management and Budget Circular A-87, entitled "Cost Principles for State, Local and Indian Tribal Governments";
- (b) Office of Management and Budget Circular A-133, entitled "Audits of States, Local Governments, and Not for Profit Organizations";
- (c) Office of Management and Budget Circular A-102, entitled "Grants and Cooperative Agreements with State and Local Governments";

- (d) Treasury Department Circular 1075, Title 31 CFR Part 205, as revised, entitled "Regulations Governing Withdrawal of Cash from the Treasury for Advance under Federal Grant and Other Programs";
- (e) City of San Antonio Operational Guidelines and General Provisions; affixed hereto and incorporated herein for all purposes as Attachment II.
- (f) Office of Management and Budget Circular A-122, entitled "Cost Principles for Non-Profit Organizations"; and
- (g) Uniform Grant and Contract Management Standards.
- (h) Office of Management and Budget Circular A-21, entitled "Cost Principles for Educational Institutions."

To the extent that this document conflicts with item (e) (City of San Antonio Operational Guidelines and General Provisions) above, this document shall be controlling.

- 5.2 The City's Department of Community Initiatives will have the authority to perform all accounting functions or delegate all or part of the responsibility to the Contractor. All contractor funds and accounts will be subject to City Operational Guidelines and City of San Antonio General Provisions.
- 5.3 The Contractor agrees to comply with all the terms and conditions that the City must comply with in its Contract with N/A. A copy of such contract is attached hereto and incorporated herein for all purposes as Attachment III.
- 5.4 The Contractor understands that certain funds provided it pursuant to this Agreement are funds which have been made available by the City and that it will, therefore, comply with all rules, regulations, policies, and procedures applicable to these funds as directed by the City. This section shall also incorporate and the Contractor agrees to abide by any and all future amendments or additions to such rules and regulations as they may be promulgated.
- 5.5 In the event that any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio rules and regulations, shall have the final authority to render or secure an interpretation.

VI. AUDIT

- 6.1 If Contractor expends \$50,000.00 or more of City dollars during the term of this contract, the Contractor shall furnish the Department of Community Initiatives with an audit, as described in the City's Operational Guidelines conducted by an outside independent auditor, within one hundred and twenty (120) days of the close of the accounting period or termination of this contract. If the amount of funds to be paid to Contractor in Section 2 of this Contract is for \$50,000.00 or more, then the Contractor further agrees to provide a line item in their budget for a financial statement audit prepared by an independent outside auditor. If the City determines, in its sole discretion, that Contractor is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Contractor pay for such audit.

In addition, when the Contractor has expended federal funds received through the City of San Antonio that exceed the Single Audit threshold amount in effect during the period of this contract, the audit shall be made in accordance with the Single Audit Act Amendments of 1996 and U.S. Office of Management and Budget Circular A - 133 (June 1997 revision), and/or the State of Texas Single Audit circular.

- 6.2 Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any audit, the Contractor shall refund such amount to the City. The Contractor further authorizes the City to deduct such amount or charge as a claim against future payments.

VII. RECORDS AND REPORTING

- 7.1 The City's Department of Community Initiatives is assigned monitoring, fiscal control, and evaluation of all projects. Therefore, at such times and in such form as may be required, the Contractor shall furnish such statements, records, data, and information and permit such interviews with personnel and board members pertaining to the matters covered by this contract.
- 7.2 The Contractor will submit to the City's Department of Community Initiatives such reports as may be required by the City, including the Contract Management Report, attached hereto and incorporated herein as Attachment IV.

The Contract Management Report is to be submitted by the fifth (5) working day of each month. Documentation for the reports will be maintained by the Contractor for a period of three (3) years after the termination date hereof.

The City's Department of Community Initiatives may from time to time, request changes in the scope of the services to be performed by the Contractor. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be incorporated in written amendments to this contract in accordance with section 18.1 of this CONTRACT.

The Director of the Department of Community Initiatives or his designee shall have the authority to execute an amendment to the contract that revises the Performance Impact Plan without the necessity of seeking subsequent City Council approval so long as the terms of the amendment stay within the parameters set forth in the Executive Summary/Statement of Work.

- 7.3 (a) No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONTRACTOR under this CONTRACT shall be disclosed or made available to any individual or organization by CONTRACTOR without the express prior written approval of the CITY.

CONTRACTOR shall establish a method to secure the confidentiality of records and information that CONTRACTOR may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the CITY'S or its authorized representatives' right of access to records or other information under this CONTRACT.

If CONTRACTOR receives inquiries regarding documents within their possession pursuant to this CONTRACT, CONTRACTOR shall immediately forward such requests to CITY for disposition.

(b) Contractor and its permitted subcontractors shall make no use of the information supplied by the City hereunder, or assembled by Contractor under this contract, except for the purpose of providing services pursuant to this Contract. Contractor and its subcontractors further shall not sell, transfer, assign or otherwise make available to any other party, whether for consideration or for no consideration, the information supplied by the City hereunder without the express prior written consent of the City.

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

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

Contractor acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by this contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees, to turn over to City, all such records upon termination of this contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

VIII. INSURANCE

8.1 Contractor agrees to comply with the following insurance provisions:

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

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation* 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	For <u>Bodily Injury</u> and
c. Broad Form Contractual Liability	and <u>Property Damage</u> of
d. Products/completed operations	\$1,000,000 per
e. Broad Form Property Damage, To include fire legal liability*	occurrence \$2,000,000 general
f. Personal Injury	aggregate or its equivalent
g. Explosion, collapse, underground And property damage Personal Injury*	in umbrella or excess liability coverage
3. Business Automobile Liability*	

- a. Owned/leased vehicles
- b. Non-owned vehicles
- c. Hired vehicles

Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

*if applicable

- (d) The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (e) Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
 - Name the City and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - The Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under the contract with the City of San Antonio; and
 - Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.
- (f) Contractor shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

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

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

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

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

IX. INDEMNITY

9.1 CONTRACTOR AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

- (a) Contractor covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall promptly advise the City in writing of any claim or demand against the CITY or CONTRACTOR known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation of and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.
- (b) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this 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.

X. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

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

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

Advocacy Policy and City's Equal Opportunity Affirmative Action policy, these policies being available in City's Department of Economic Development, Division of Internal Review and the City Clerk's Office.

- (b) If the amount of funds to be paid to Contractor in section 2 of this Contract is for \$200,000.00 or more, then the Contractor agrees to submit to the City a Good Faith Effort Plan (GFEP) indicating Contractor's utilization of Small, Minority and Woman-owned Business Enterprises no later than fifteen (15) days from the date of execution of this Contract. If City approves the GFEP, and the City subsequently finds material deficiencies in any aspect of the GFEP, Contractor will be required to submit a written report to City's Department of Economic Development. The Contractor will also be required to submit a supplemental Good Faith Effort Plan indicating efforts to resolve any deficiencies. A denied Supplemental Good Faith Effort Plan, by the City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by the Contractor. Failure to obtain an approved Supplemental Good Faith Effort Plan, within ninety (90) days of initial denial shall constitute a default and result in penalty on the Contractor of \$1,000.00 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitute a further (additional) condition of default by the Contractor and which can, at the option of the Director, result in forfeiture of the entirety of this contract.

XI. APPLICABLE LAWS

- 11.1 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.2 The Contractor will adhere to City of San Antonio policies and procedures, as they now exist or as they may subsequently be adopted, in all respects, so that Contractor's policies will be no more liberal than the City of San Antonio's policy and procedures. These are highlighted in Operational Guidelines and General Provisions for the City of San Antonio Funded Projects, and may be amended from time to time to reflect any subsequent Operational Guidelines and General Provisions incorporating City policies and procedures.
- 11.3 All of the work performed under this Agreement by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.
- 11.4 Contractor shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended;
 - c. The Age Discrimination Act of 1975, as amended;
 - d. Title IX of the Education Amendments of 1972, as amended; and
 - e. All applicable regulations implementing those laws.
- 11.5 If receiving Youth Opportunity Funds, the Contractor also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed a above. This assurance applies to the Contractor's operation of the WIA Title I financially assisted program or activity and to all agreements the Contractor makes to carry out the WIA Title I financially assisted program or activity. The

Contractor understands that the United States has the right to seek judicial enforcement of this assurance.

- 11.6 If receiving Community Services Block Grant (CSBG) Funds, the Contractor will adhere to all the requirements of the Results Oriented Management and Accountability (ROMA); a system designed to measure results consistently throughout the Contractors service delivery system, as mandated by Texas Department of Housing and Community Affairs (TDHCA) in CSBG Policy Insurance 98.12.8.

XII. NO SOLICITATION

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

XIII. TERMINATION

- 13.1 Termination for Cause - Should the Contractor fail to fulfill, in a timely and proper manner, obligations under this contract to include performance standards established by the City, or if this Contractor should violate any of the covenants, agreements, or stipulations of the contract, the City shall thereupon have the right to terminate this contract by sending written notice to the Contractor of such termination and specify the effective date thereof (which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent). The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.
- 13.2 Termination for Convenience - This Agreement may be terminated in whole or in part when the City determines that continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. Such termination by City shall specify the date thereof, which date shall not be sooner than thirty (30) days following the day on which notice is sent. The Contractor shall also have the right to terminate this contract and specify the date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which notice is sent. The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance of its obligations for which final payment is sought.
- 13.3 Notwithstanding Sections 13.1 and 13.2 of this agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this contract, and the City may withhold funds otherwise due as damages.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 The Contractor agrees that neither the program nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or in any extent engaged in the conduct of political activities. Prohibited activities include, but are not necessarily limited to, the assignment of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities for the benefit of a particular candidate, political party or issue, to provide voters and prospective voters with transportation to the polls, or to participate in partisan

political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

XV. SPECIAL PROVISIONS

15.1 Contractor agrees to comply with the following special provisions:

- (a) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
- (b) During the term of this Contract, if Contractor files and/or pursues an adversarial proceeding against the City then, at the City's option, this Contract and all access to the funding provided for hereunder may terminate if Contractor is in violation of 15.1(a).
- (c) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.
- (d) For purposes of this Article, "adversarial proceedings" include any cause of action filed by the Contractor in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

15.2 Contractor agrees to comply with all the additional special provisions which are attached hereto and incorporated herein for all purposes as Attachment V.

XVI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XVII. DEBARMENT

17.1 Contractor certifies, and the City relies thereon in execution of this Agreement, that neither Contractor nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department. "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

XVIII. AMENDMENT

18.1 Except when the terms of this contract expressly provide otherwise, any alterations additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval.

XIX. ASSIGNMENT

19.1 Contractor shall not assign or transfer Contractor's interest in this agreement without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.

XX. SUBCONTRACTING

20.1 None of the work or services covered by this agreement shall be sub-contracted without the prior written consent of City and the approval by ordinance by the San Antonio City Council, provided, however, the Director of Community Initiatives may approve subcontracts for professional services up to 25% of the total amount of the CONTRACT but in no event can the amount of said subcontracts exceed \$25,000.00. Any work or services approved for sub-contracting hereunder, however, shall be

sub-contracted only by written agreement, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this agreement. Compliance by sub-Contractors with this agreement shall be the responsibility of Contractor. Contractor agrees that payment for services of any approved sub-Contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-Contractors.

XXI. OFFICIAL COMMUNICATIONS

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

CITY
Director
Department of Community Initiatives
115 Plaza de Armas, Suite 210
San Antonio, Texas 78205

Contractor
Executive Director
San Antonio Food Bank
4311 Director Dr.
San Antonio, TX 78219

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

XXII. VENUE

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

XXIII. GENDER

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

XXIV. AUTHORITY

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

XXV. LICENSES AND TRAINING

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

XXVI. SEVERABILITY

- 26.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity.

illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this agreement that is invalid, illegal or unenforceable, there be added as a part of this agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXVII. ENTIRE AGREEMENT

27.1 This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersedes all prior negotiations, representations, or agreements, either oral or written.

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

CITY OF SAN ANTONIO:

Dennis J. Campa, Director,
Department of Community Initiatives

APPROVED AS TO FORM:

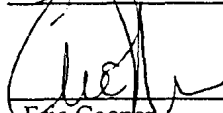
City Attorney

CONTRACTING AGENCY:

San Antonio Food Bank

4311 Director Dr.

San Antonio, TX 78219


Eric Cooper
Executive Director

Board President (if required by Agency)

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:

N/A

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

San Antonio Food Bank, Inc.

and the name of:

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

N/A

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:

N/A

¹ 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.

- (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.

N/A

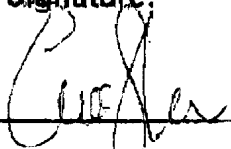
Political Contributions

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:
N/A	N/A	N/A

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 question² 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: Executive Director Company: San Antonio Food Bank, Inc.	Date: October 20, 2003

² 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.