

AN ORDINANCE 2011-09-29-0786

**AUTHORIZING: (1) THE ACCEPTANCE OF A SPECIAL WARRANTY DEED FROM LIFSHUTZ COMPANIES OF APPROXIMATELY 29.416 ACRES OF PRIVATELY-OWNED VACANT REAL PROPERTY NECESSARY FOR THE DRAINAGE PROJECT LOCATED ALONG LAVEN DRIVE ON THE WEST SIDE OF ZARZAMORA CREEK DRAINAGE RIGHT-OF-WAY SOUTH OF CULEBRA ROAD IN NCBS 12002, 12003, 12004 AND 12005; AND, (2) CONVERTING A \$692,842.00 HOUSING DEVELOPMENT GRANT (HDG) LOAN INTO A GRANT, RELEASING THE LIEN AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF A HDG GRANT AGREEMENT WITH RESTRICTIVE COVENANT OF AFFORDABILITY WITH LIFSHUTZ COMPANY.**

\* \* \* \* \*

**WHEREAS**, City Council approved construction of Mayfield Gardens Family Apartments Project as a project to be funded with U.S. Department of Housing and Urban Development (HUD) Housing Development Grant (HDG) Program funds to provide affordable housing; and

**WHEREAS**, City entered into a loan agreement with Mayfield Equities, Inc. to fund said project, in the amount of \$692,842.00 (“the Loan”); and

**WHEREAS**, Mayfield Equities, Inc. executed a note for the Loan amount to City and City placed a lien on the project property to secure the note; and

**WHEREAS**, City now desires to convert the Loan into a grant and release the lien on the project property; and

**WHEREAS**, it is the City Council’s intention to authorize the negotiation and execution of an HDG Grant Agreement with a restrictive covenant of affordability with Lifshutz Company, the successors of Mayfield Equities, Inc.; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the city an instrument in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth, and to consummate the transaction contemplated therein. The city manager and her designee, severally, should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

**SECTION 2.** The City Manager, and her designee is hereby authorized to execute a HDG Grant Agreement with a restrictive covenant of affordability with Lifshutz Company, the

successors of Mayfield Equities, Inc. A copy of the Agreement in its substantially final form is attached hereto and incorporated herein for all purposes as **Attachment II**.

**SECTION 3.** Payment in the amount not to exceed \$250,000.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00050, Culebra 58F, Phase II B, is authorized to be encumbered and made payable to Planning and Community Development for approximately 29.416 acres of privately-owned vacant real property located along Laven Drive in Bexar County, Texas.

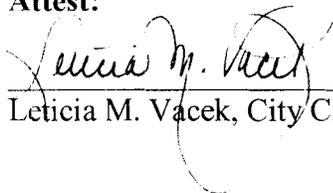
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately. The authority granted under this ordinance will expire 120 days after the ordinance becomes effective.

**PASSED AND APPROVED** this 29<sup>th</sup> day of September 2011.

  
M A Y O R  
Julián Castro

**Attest:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**Approved As To Form:**

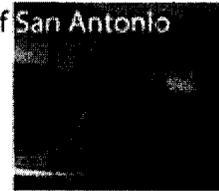
  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for

# COUNCIL ACTION

City of San Antonio



## Agenda Voting Results - 20C

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19A, 19B, 20B, 20C, 21, 22, 23, 25, 26A, 26B, 26C, 26D, 26E, 26F, 26G, 26H, 26I, 26J, 27A, 27B, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41A, 41B, 41C						
<b>Date:</b>	09/29/2011						
<b>Time:</b>	11:04:43 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An ordinance authorizing: (1) the negotiation and execution of a real estate purchase agreement with property owner Lifshutz Companies to acquire fee simple title to approximately 29.416 acres of privately-owned vacant real property necessary for the drainage project located along Laven Drive on the west side of Zarzamora Creek drainage right-of-way south of Culebra Road in NCBs 12002, 12003, 12004 and 12005; and, (2) converting a \$692,842.00 Community Development Block Grant (CDBG) loan into a grant, releasing the lien and authorizing the negotiation and execution of a CDBG Grant Agreement with restrictive covenant with Lifshutz Company.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

## Attachment I

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**Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.**

**SPECIAL WARRANTY DEED  
(AND ASSIGNMENT OF CLAIMS)**

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**Authorizing Ordinance:**

**Parcel:** 13753F

**Grantor:** Lifshutz Companies, L.P., a Texas limited partnership

**Grantor's Mailing Address:** c/o Shelton and Valadez, PC, 600 Navarro, Suite 500, San Antonio, Texas 78205 (Attn: Bobby Perez)

**Grantee:** City of San Antonio

**Grantee's Mailing Address:** P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Capital Improvement Management Services)

**Consideration:** \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

**Property:** Approximately 29.416 acres located along Lavern Drive and the west side of Zarzamora Creek drainage right-of-way, south of Culebra Road including Lots 2-7, Block 5, NCB 12002; Lots 1-7 and the South irregular 388.55 feet of Lot 8, and the South irregular 257.51 feet of Lot 9, Block 6, NCB 12003; Lots 1-18, Block 7, NCB 12004; and Lots 1-6 and the West 62.89 feet of Lot 7, Block 8, NCB 12005 City of San Antonio, Bexar County, Texas and more particularly described in the attached **Exhibit A**.

**Grantor**, for the consideration and subject to the reservations from and exceptions to conveyance and warranty attached hereto as **Exhibit B** (the "**Permitted Exceptions**"), **grants, sells, and conveys to Grantee**, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold to Grantee, and Grantee's heirs and assigns forever.

Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

Property Condition. GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTEE IS EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT GRANTEE INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED (OR EMPLOYED PERSONS WHO ARE QUALIFIED) TO MAKE SUCH INSPECTION. GRANTEE ACKNOWLEDGES THAT IT IS FULLY RELYING ON GRANTEE'S (OR GRANTEE'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY GRANTOR OR ANY OF ITS REPRESENTATIVES. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS

(OR GRANTEE'S REPRESENTATIVES HAVE), THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY GRANTEE IN ORDER TO ENABLE GRANTEE TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND GRANTEE ACKNOWLEDGES THAT GRANTEE IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. GRANTEE HEREBY RELEASES GRANTOR FROM ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE OF CLOSING. GRANTEE EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT GRANTEE MIGHT OTHERWISE HAVE AGAINST GRANTOR RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY.

DTPA Waiver. GRANTEE WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF GRANTEE'S OWN SELECTION, GRANTEE VOLUNTARILY CONSENTS TO THIS WAIVER.

GRANTEE ACKNOWLEDGES AND AGREES THAT THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SUBCHAPTER E OF CHAPTER 17 OF THE TEXAS BUSINESS AND COMMERCE CODE, SECTIONS 17.41 THROUGH 17.63, INCLUSIVE (THE "DTPA"), IS NOT APPLICABLE TO THIS TRANSACTION, AND THAT, WITH RESPECT TO ALL ACTS OF GRANTOR, PAST, PRESENT OR FUTURE IN CONNECTION WITH THE CONTRACT, THE RIGHTS AND REMEDIES OF GRANTEE WILL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE DTPA.

IN FURTHERANCE OF THE FOREGOING, GRANTEE REPRESENTS THAT IT HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION ASSOCIATED WITH THIS DEED. GRANTOR REPRESENTS THAT IT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GRANTOR.

THE FOREGOING WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY GRANTEE, AND GRANTEE ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL IN CONNECTION WITH THE NEGOTIATIONS AND EXECUTION OF THE CONTRACT AND THIS WAIVER AND HAS HAD THE OPPORTUNITY TO DISCUSS THE FOREGOING WAIVER AND ITS MEANING WITH SUCH COUNSEL. GRANTEE UNDERSTANDS THE LEGAL CONSEQUENCES OF SIGNING THIS WAIVER.

When the context requires, singular nouns and pronouns include the plural and plural ones include the singular.

**Assignment of Claims**

In addition to the conveyance of real estate addressed above, Grantor on a non-exclusive basis hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist; provided that the foregoing assignment shall not preclude Grantor from asserting any such assigned claim to the extent that liability is asserted against Grantor arising out of or related to any such assigned claim.

**Release of Claims**

Grantor releases, acquits, and forever discharges Grantee and its officers, employees, agents, representatives, elected officials from any and all claims, demands, actions, or causes of action arising from or relating to matters any person or entity dumping spoil upon the Property; provided that the foregoing release shall not extend to any claim Grantor may have against Grantee or its officers, employees, agents, representative or elected officials that is asserted by any unrelated party regarding the dumping of such spoilage. As used herein, unrelated party shall mean any person or entity which is not directly or indirectly controlled by any lineal descendant of Sam Lifshutz and "controlled" shall mean more then fifty-one percent owned by a person or entity.

Lifshutz Companies, L.P.,  
A Texas limited partnership

By: Lifshutz Management, LLC,  
A Texas limited liability company,  
Its General Partner

\_\_\_\_\_  
James G. Lifshutz, Sole Member

\_\_\_\_\_  
Date

State of Texas §

County of Bexar §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_ by James G. Lifshutz, the Sole Member of Lifshutz Management, L.L.C, a Texas limited liability company, the general partner of Lifshutz Companies, L.P., a Texas limited partnership, on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**Approved as to Form:**

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

After recording, please return to:  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
(Attention: Director, Capital Improvement Management Services)

**Exhibit A**

LINE	BEARING	DISTANCE
L1	S 89°44'38" W	54.00'
L2	S 26°40'58" E	23.00'
L3	S 55°16'37" E	22.30'
L4	N 3°36'14" W	164.24'
L5	S 06°15'22" E	50.00'
L6	S 06°15'22" E	50.00'

TRACT 1  
LOTS 2, 3, 4, 5

**METES AND BOUNDS**  
**Parcel# -- 13753F Tract 1**  
**Project Name -- Culebra 58F Phase 1B**

Being 5.290 acres of land, more or less, and being Lots 2 through 7, Block 5, No. 72, New City Block 12002, situated in the City of San Antonio, Bexar County, Texas, according to the plat recorded in Volume 2222, Page 360, Deed Records, Bexar County, Texas, said 5.290 acres more particularly described by metes and bounds as follows:

**COMMENCING** at a 1/2 inch iron rod found for the southeast corner of Lot 20 in Canterbury Subdivision Unit 3 (Volume 9558, Page 209), same being the southwest corner of the STLP1, LTD tract (Volume 6945, Page 1114) and in the North Line of Lot 35 in Western Park Unit 1 (Volume 6600, Pages 23-25), same also being the **POINT OF COMMENCEMENT**;

**THENCE** along the North line of Western Park Unit 1, South 89 degrees 32 minutes 43 seconds East, a distance of 50.00 feet to a 1/2 inch iron rod set for the southwest corner of this 5.290 acres, same being the southwest corner of said Lot 7 and the **POINT OF BEGINNING**;

**THENCE** along the line common to this 5.290 acres and said STLP1, LTD tract, North 00 degrees 10 minutes 35 seconds West (called North 00 degrees 05 minutes 33 seconds West), a distance of 1545.71 feet (called 1545.50 feet) to a 1/2 inch iron rod set for the northwest corner of this 5.290 acres, same being the southwest corner of Lot 1;

**THENCE** along the line common to this 5.290 acres and said Lot 1, North 87 degrees 56 minutes 47 seconds East (called North 88 degrees 06 minutes 36 seconds East), a distance of 147.77 feet (called 150.07 feet) to a 1/2 inch iron rod set for the northeast corner of this 5.290 acres, same being the southeast corner of said Lot 1 and in the West Right-of-Way of Laven Drive;

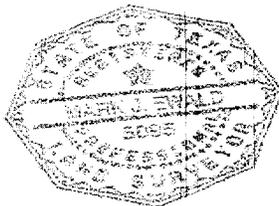
**THENCE** along the West Right-of-Way of Laven Drive, South 00 degrees 15 minutes 22 seconds East (called South 00 degrees 05 minutes 33 seconds East), a distance of 1552.21 feet to a 1/2 inch iron rod set for the southeast corner of this 5.290 acre, same being the northeast corner of Lot 38 in said Western Park Unit 1;

**THENCE** along the line common to this 5.290 acres and said Western Park Unit 1, North 89 degrees 32 minutes 43 seconds West (called North 89 degrees 42 minutes 48 seconds West), at a distance of 65.52 feet pass a 1/2 inch iron rod found for the northwest corner of said Lot 38, Western Park Unit 1 and the northeast corner of Lot 37, Western Park Unit 1, and continuing for a total distance of 149.85 feet (called 150.00 feet) to the **POINT OF BEGINNING**, and containing 5.290 acre of land, more or less.

I hereby certify that these field notes were prepared from an actual survey made on the ground under my supervision and are true and correct to the best of my knowledge and belief. All iron rods set are 1/2 inch rebar. A survey plat of the above described tract prepared this day is hereby attached to and made a part hereof.



Mark J. Ewald  
Registered Professional Land Surveyor  
Texas Registration No. 5095  
November 11, 2010



**METES AND BOUNDS**  
**Parcel# – 13753F Tract 2**  
**Project Name – Culebra 58F Phase 1B**

Being 8.725 acres of land, more or less, and being all of Lots 1 through 7, the South irregular 388.5 feet of Lot 8, and the South irregular 257.51 feet of Lot 9, Block 6, New City Block 12003, situated in the City of San Antonio, Bexar County, Texas, according to the plat recorded in Volume 2222, Page 360, Deed Records, Bexar County, Texas, said 8.725 acres more particularly described by metes and bounds as follows:

**COMMENCING** at a 1/2 inch iron rod found for the northwest corner of Lot 21 in Western Park Unit 1 (Volume 6600, Pages 23-25), same being the northeast corner of Lot 22 of said Western Park Unit 1 and in the South line of Tract 4, surveyed this same date, same also being the **POINT OF COMMENCEMENT**;

**THENCE** along the North line of Western Park Unit 1, North 89 degrees 52 minutes 37 seconds West (called North 89 degrees 42 minutes 48 seconds West), a distance of 170.49 feet to a 1/2 inch iron rod set for the southwest corner of said Tract 4, same being in the East Right-of-Way line of Laven Drive;

**THENCE** along the East Right-of-Way line of said Laven Drive, North 00 degrees 15 minutes 22 seconds West (called North 00 degrees 05 minutes 33 seconds West), a distance of 863.60 feet to a point for the southwest corner of said Block 6, same being the southwest corner of said Lot 1 and the southwest corner of this 8.725 acres, same also being at the intersection of the East Right-of-Way line of said Laven Drive and the North Right-of-Way line of Kaliff Drive and the **POINT OF BEGINNING**;

**THENCE** along the East Right-of-Way line of said Laven Drive, North 00 degrees 15 minutes 22 seconds West (called North 00 degrees 05 minutes 33 seconds West), a distance of 435.60 feet to a 1/2 inch iron rod set for the northwest corner of this 8.725 acres, same being the southwest corner the City of San Antonio 0.8609 acres (Volume 11382, Page 259);

**THENCE** along the line common to this 8.725 acres and said City of San Antonio 0.8609 acres, North 89 degrees 44 minutes 38 seconds East (called North 89 degrees 54 minutes 27 seconds East), a distance of 771.23 feet to a 1/2 inch iron rod set for the upper northeast corner of this 8.725 acres, same being in the South line of the City of San Antonio 7.19 acres (Volume 11382, Page 259) and the northwest corner of the City of San Antonio tract (Volume 869, Page 1094), same also being the upper northeast corner of said South irregular 388.5 feet of Lot 8;

**THENCE** along the lines common to this 8.725 acres and said San Antonio Tract the following courses and distances:

South 26 degrees 40 minutes 33 seconds East, a distance of 23.00 feet to a 1/2 inch iron rod set for an angle corner;

South 35 degrees 16 minutes 37 seconds East, a distance of 32.30 feet to a 1/2 inch iron rod set for an angle corner;

and,

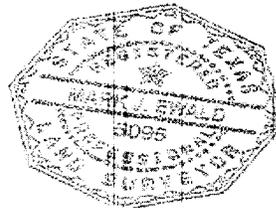
South 37 degrees 36 minutes 15 seconds East, a distance of 164.84 feet to a 1/2 inch iron rod set for the lower northeast corner of this 8.725 acres, same being the northeast corner of said South irregular 257.51 feet of Lot 9 and in the West line of Lot 10;

**THENCE** along the line common to this 8.725 acres and said Lot 10, South 00 degrees 15 minutes 22 seconds East (called South 00 degrees 05 minutes 33 seconds East), a distance of 257.51 feet to a 1/2 inch iron rod set for the southeast corner of this 8.725 acres, same being the southwest corner of said Lot 10 and the southeast corner of said Lot 9, same also being in the North Right-of-Way line of said Kaliff Drive;

**THENCE** along the North Right-of-Way line of said Kaliff Drive, South 89 degrees 44 minutes 38 seconds West (called South 89 degrees 54 minutes 27 seconds West), a distance of 900.00 feet to the **POINT OF BEGINNING**, and containing 8.725 acre of land, more or less.

**I hereby certify that these field notes were prepared from an actual survey made on the ground under my supervision and are true and correct to the best of my knowledge and belief. All iron rods set are 1/2 inch rebar. A survey plat of the above described tract prepared this day is hereby attached to and made a part hereof.**

  
\_\_\_\_\_  
**Mark J. Ewald**  
**Registered Professional Land Surveyor**  
**Texas Registration No. 5095**  
**November 11, 2010**



**METES AND BOUNDS**  
**Parcel# -- 13753F Tract 3**  
**Project Name -- Culebra 58F Phase 1B**

Being 9.000 acres of land, more or less, and being all of Lots 1 through 18, Block 7, New City Block 12004, situated in the City of San Antonio, Bexar County, Texas, according to the plat recorded in Volume 2222, Page 360, Deed Records, Bexar County, Texas, said 9.000 acres more particularly described by metes and bounds as follows:

**COMMENCING** at a 1/2 inch iron rod found for the northwest corner of Lot 21 in Western Park Unit 1 (Volume 6600, Pages 23-25), same being the northeast corner of Lot 22 of said Western Park Unit 1 and in the South line of Tract 4, surveyed this same date, same also being the **POINT OF COMMENCEMENT**;

**THENCE** along the North line of Western Park Unit 1, North 89 degrees 52 minutes 37 seconds West (called North 89 degrees 42 minutes 48 seconds West), a distance of 170.49 feet to a 1/2 inch iron rod set for the southwest corner of said Tract 4, same being in the East Right-of-Way line of Laven Drive;

**THENCE** along the East Right-of-Way line of said Laven Drive, North 00 degrees 15 minutes 22 seconds West (called North 00 degrees 05 minutes 33 seconds West), a distance of 378.00 feet to a point for the southwest corner of said Block 7, same being the southwest corner of said Lot 18 and the southwest corner of this 9.000 acres, same also being at the intersection of the East Right-of-Way line of said Laven Drive and the North Right-of-Way line of Mendel Drive and the **POINT OF BEGINNING**;

**THENCE** along the East Right-of-Way line of said Laven Drive, North 00 degrees 15 minutes 22 seconds West (called North 00 degrees 05 minutes 33 seconds West), a distance of 435.60 feet to a 1/2 inch iron rod set for the northwest corner of this 9.000 acres, same being at the intersection of the East Right-of-Way of said Laven Drive and the South Right-of-Way line of Kaliff Drive and the northwest corner of said Block 7;

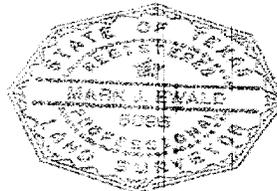
**THENCE** along the South Right-of-Way line of Kaliff Drive, North 89 degrees 44 minutes 38 seconds East (called North 89 degrees 54 minutes 27 seconds East), a distance of 900.00 feet to a 1/2 inch iron rod set for the upper northeast corner of this 9.000 acres, same being the northeast corner of said Block 7;

**THENCE** along the East line of Block 7, South 00 degrees 15 minutes 22 seconds East (called South 00 degrees 05 minutes 33 seconds East), a distance of 435.60 feet to a 1/2 inch iron rod set for the southeast corner of this 9.000 acres, same being the southeast corner of said Block 7 and in the North Right-of-Way line of said Mendel Drive;

**THENCE** along the North Right-of-Way line of said Mendel Drive, South 89 degrees 44 minutes 38 seconds West (called South 89 degrees 54 minutes 27 seconds West), a distance of 900.00 feet to the **POINT OF BEGINNING**, and containing 9.000 acre of land, more or less.

I hereby certify that these field notes were prepared from an actual survey made on the ground under my supervision and are true and correct to the best of my knowledge and belief. All iron rods set are 1/2 inch rebar. A survey plat of the above described tract prepared this day is hereby attached to and made a part hereof.

  
\_\_\_\_\_  
**Mark J. Ewald**  
**Registered Professional Land Surveyor**  
**Texas Registration No. 5095**  
**November 11, 2010**



**METES AND BOUNDS**  
**Parcel# -- 13753F Tract 4**  
**Project Name -- Culebra 58F Phase 1B**

Being 6.401 acres of land, more or less, and being all of Lots 1 through 6, and the West 62.89 feet of Lot 7, Block 8, New City Block 12005, situated in the City of San Antonio, Bexar County, Texas, according to the plat recorded in Volume 2222, Page 360, Deed Records, Bexar County, Texas, said 6.401 acres more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2 inch iron rod found for the northwest corner of Lot 21 in Western Park Unit 1 (Volume 6600, Pages 23-25), same being the northeast corner of Lot 22 of said Western Park Unit 1 and in the South line of this 6.401 acres, same also being the **POINT OF BEGINNING**;

**THENCE** along the North line of Western Park Unit 1, North 89 degrees 52 minutes 37 seconds West (called North 89 degrees 42 minutes 48 seconds West), a distance of 170.49 feet to a 1/2 inch iron rod set for the southwest corner of this 6.401 acres, same being in the East Right-of-Way line of Laven Drive;

**THENCE** along the East Right-of-Way line of said Laven Drive, North 00 degrees 15 minutes 22 seconds West (called North 00 degrees 05 minutes 33 seconds West), a distance of 328.00 feet to a point for the northwest corner of this 6.401 acres, same being at the intersection of the East Right-of-Way line of said Laven Drive and the South Right-of-Way line of Mendel Drive;

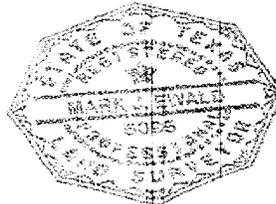
**THENCE** along the South Right-of-Way line of Mendel Drive, North 89 degrees 44 minutes 38 seconds East (called North 89 degrees 54 minutes 27 seconds East), a distance of 842.89 feet to a 1/2 inch iron rod set for the northeast corner of this 6.401 acres, same being the northwest corner of the City of San Antonio 0.7854 acres (Volume 8690, Page 1094);

**THENCE** along the line common to this 6.401 acres and said City of San Antonio 0.7854 acres, South 00 degrees 15 minutes 22 seconds East (called South 00 degrees 05 minutes 33 seconds East), a distance of 333.58 feet to a 1/2 inch iron rod set for the southeast corner of this 6.401 acres, same being the southwest corner of said City of San Antonio 0.7854 acres;

**THENCE** along the South line of this 6.401 acres, South 89 degrees 44 minutes 38 seconds West (called South 89 degrees 54 minutes 27 seconds West), at a distance of 397.25 feet pass a 1/2 inch iron rod found for the northwest corner of Lot 16 of Western Park Unit 1, same being the northeast corner of Lot 17 of Western Park Unit 1, and continuing for a total distance of 672.42 feet to the **POINT OF BEGINNING**, and containing 6.401 acre of land, more or less.

I hereby certify that these field notes were prepared from an actual survey made on the ground under my supervision and are true and correct to the best of my knowledge and belief. All iron rods set are 1/2 inch rebar. A survey plat of the above described tract prepared this day is hereby attached to and made a part hereof.

  
\_\_\_\_\_  
**Mark J. Ewald**  
**Registered Professional Land Surveyor**  
**Texas Registration No. 5095**  
**November 11, 2010**





## **II. RESPONSIBILITIES**

2.1 SUB-GRANTEE hereby accepts responsibility for the performance, in a satisfactory and efficient manner as solely determined by CITY, of all services and activities set forth in this CONTRACT.

2.2 Unless written notification by SUB-GRANTEE to the contrary is received and approved by CITY, SUB-GRANTEE's President shall be SUB-GRANTEE's designated representative responsible for the management of all contractual matters pertaining to this CONTRACT.

2.3 City's Office of Grants Monitoring and Administration's Grants Administrator or his designee shall be CITY's representative responsible for the administration of this CONTRACT.

2.4 Communications between CITY and SUB-GRANTEE shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.2 and 2.3 hereinabove.

## **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.1 SUB-GRANTEE understands that funds provided to it pursuant to this CONTRACT are funds which have been made available to CITY by the federal government under the U.S. Housing Act of 1937 and in accordance with CITY's HUD-approved Grant Application and with other specific assurances made and executed by CITY. SUB-GRANTEE, therefore, assures and certifies that it will comply with the requirements of the U.S. Housing Act of 1937 and with all regulations promulgated thereunder as codified as Title 24 of the Code of Federal Regulations. SUB-GRANTEE understands, however, that the U.S. Housing Act of 1937 in no way is meant to constitute a complete compilation of all duties imposed upon SUB-GRANTEE by law or administrative ruling, or to narrow the standards which SUB-GRANTEE must follow. Accordingly, SUB-GRANTEE understands that if the regulations and issuances promulgated pursuant to the U.S. Housing Act of 1937 are amended or revised, it shall comply with them or otherwise immediately notify CITY pursuant to the provisions of Article XLV of this CONTRACT.

3.2 SUB-GRANTEE understands that summaries of certain compliance requirements mandated by applicable laws or regulations are contained in CITY's Federal Compliance Manual, and any amendments thereof, a copy of which is attached hereto and incorporated herein for all purposes as Attachment "III", and that SUB-GRANTEE must at all times remain in compliance therewith. SUB-GRANTEE further understands that said summaries are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon SUB-GRANTEE by law or administrative ruling, or to narrow the standards which SUB-GRANTEE must follow.

3.3 SUB-GRANTEE assures that all contractors and subcontractors receiving funds in connection with this Project are familiar with, and shall comply with, any and all applicable rules and regulations as contained in CITY's Federal Compliance Manual and that a copy of said Federal Compliance Manual will be included as part of every contract awarded in connection with this Project.

**3.4 SUB-GRANTEE shall observe and comply with all city, state and federal**

**laws, regulations, ordinances, and codes affecting SUB-GRANTEE's operations pursuant to this CONTRACT.**

#### **IV. LEGAL AUTHORITY**

4.1 SUB-GRANTEE represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein required.

4.2 The signer of this CONTRACT for SUB-GRANTEE represents, warrants, assures, and guarantees that he or she has full legal authority to execute this CONTRACT on behalf of SUB-GRANTEE and to bind SUB-GRANTEE to all terms, performances, and provisions herein contained.

4.3 In the event that a dispute arises as to the legal authority to enter into this CONTRACT of either the SUB-GRANTEE or the person signing on behalf of SUB-GRANTEE, CITY shall have the right, at its option, to either temporarily suspend, or permanently terminate this CONTRACT. Should CITY suspend or permanently terminate this CONTRACT pursuant to this paragraph, however, SUB-GRANTEE shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

#### **V. MAINTENANCE OF EFFORT**

5.1 SUB-GRANTEE agrees that the funds and resources provided to it under the terms of this CONTRACT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or other benefits which would have been available to, or provided through, SUB-GRANTEE had this CONTRACT not been executed.

#### **VI. PERFORMANCE BY SUB-GRANTEE**

6.1 SUB-GRANTEE, in accordance and compliance with the terms, provisions and requirements of this CONTRACT, shall manage, perform and provide all of the activities and services set forth in the Work Statement attached hereto, and incorporated herein for all purposes as Attachment "I," to CITY's satisfaction, utilizing only those funds remitted to SUB-GRANTEE by CITY under the terms of this CONTRACT. The funds available for utilization hereunder shall be as described in Attachment "II" also attached hereto, and incorporated herein for all purposes.

6.2 Modifications or alterations to Attachment "I" may be made only pursuant to the prior written approval of CITY's Office of Grants Monitoring and Administration's Grants Administrator or her designate.

#### **VII. REIMBURSEMENT BY CITY**

7.1 In consideration of SUB-GRANTEE's performance, in a satisfactory and efficient manner as determined by CITY, of all services and activities set forth in this CONTRACT, CITY agrees to reimburse SUB-GRANTEE for all eligible expenses incurred hereunder. Such

reimbursement, however, shall be in accordance with the Project Budget set forth in Attachment "II" and shall be subject to any and all limitations and provisions set forth in this Article and in Article IX hereunder.

7.2 Notwithstanding any other provision of this CONTRACT, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed the sum of Six Hundred Ninety-two Thousand Eight Hundred Forty-two and No/100 Dollars (\$692,842.00).

7.3 It is expressly understood and agreed by CITY and SUB-GRANTEE that CITY's obligations under this Article are contingent upon the actual receipt of adequate HDG funds to meet CITY's liabilities hereunder. Should CITY not receive funds to make payments pursuant to this CONTRACT or should fund awards be reduced, CITY shall notify SUB-GRANTEE in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this CONTRACT or reduce the amount of its liability accordingly.

7.4 It is expressly understood by CITY and SUB-GRANTEE that this CONTRACT in no way obligates CITY's general fund monies or any other monies or credits of CITY.

7.5 CITY shall not be liable for any SUB-GRANTEE cost, or portion thereof, which:

- (A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;
- (B) Was incurred prior to the commencement date or subsequent to the termination date of this CONTRACT as specified in Article I hereinabove;
- (C) Is not in strict accordance with the terms of this CONTRACT, including all Attachments attached hereto;
- (D) Has not been billed to CITY within thirty (30) calendar days following billing to SUB-GRANTEE, or termination of this CONTRACT, whichever is earlier; or
- (E) Is not an allowable cost as defined by Article X of this CONTRACT or by the Project Budget (Attachment "II").

7.6 CITY shall not be liable for any SUB-GRANTEE cost, or portion thereof, which is or was incurred in connection with an activity of SUB-GRANTEE where:

- (A) Prior written authorization from CITY is required for the activity and such authorization was not first procured; or
- (B) CITY has requested that SUB-GRANTEE furnish data concerning an activity prior to proceeding further therewith and SUB-GRANTEE nonetheless proceeds without first submitting the data and receiving CITY approval thereof.

7.7 CITY shall not be obligated or liable under this CONTRACT to any party, other than SUB-GRANTEE, for payment of any monies or provision of any goods or services.

**VIII. RECEIPT, DISBURSEMENT AND ACCOUNT  
OF FUNDS BY SUB-GRANTEE**

8.1 SUB-GRANTEE understands and agrees that it shall maintain a separate numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT and of any program income resulting therefrom, if applicable. SUB-GRANTEE further agrees that:

- (A) Such account shall contain only those funds received pursuant to this CONTRACT and that no other funds shall be mingled therewith, except funds deemed to be program income as defined in Article X hereunder;
- (B) All checks and withdrawals from such account shall have itemized documentation in support thereof;
- (C) Such account shall be maintained, under conditions approved by CITY, in a financial institution having federal deposit insurance coverage, with any account balance exceeding the federal deposit insurance coverage likewise collaterally secured; and
- (D) Upon SUB-GRANTEE's written request and solely within the discretion of CITY, an alternative accounting mechanism may be permitted, provided such alternative adheres at all times to generally accepted accounting principles.

8.2 Regarding method of payment, CITY and SUB-GRANTEE agree as follows:

- (A) SUB-GRANTEE shall deliver a Billing Package, a copy of which is attached hereto and incorporated herein for all purposes as Attachment "V," to CITY's Office of Grants Monitoring and Administration, in accordance with one of the following schedules as determined and agreed upon by both parties at the time of execution of this CONTRACT:
  - (1) Monthly billing, with the prior month's Billing Package received by CITY's Office of Grants Monitoring and Administration by no later than the fifth (5th) day of each month;
  - (2) Semi-monthly billing, with the prior month's Billing Packages received by CITY's Office of Grants Monitoring and Administration by no later than the fifth (5th) and twentieth (20th) day of each month, respectively; or
  - (3) Weekly billing, with the prior week's Billing Package received by CITY's Office of Grants Monitoring and Administration by no later than Wednesday of each week.
- (B) SUB-GRANTEE shall submit to CITY such other reports as may be required by CITY to document CITY liabilities under this CONTRACT.
- (C) Upon receipt of and approval by CITY of each of SUB-GRANTEE's Billing Packages, CITY shall pay to SUB-GRANTEE an amount equal to CITY's

liabilities not previously billed to and subsequently paid by CITY, subject to deduction for any costs questioned or not allowable. Delinquent or unacceptable billing of CITY by SUB-GRANTEE, however, shall justify delay of payment by CITY.

- (D) SUB-GRANTEE's financial management system shall provide for an adequate procedure to minimize the time elapsed between CITY's payment to SUB-GRANTEE and SUB-GRANTEE's disbursement of funds.

8.3 Within ten (10) working days of CITY's written request therefor, SUB-GRANTEE shall refund to CITY any sum of money paid by CITY to SUB-GRANTEE later determined to:

- (A) Have resulted in overpayment to SUB-GRANTEE;
- (B) Have not been spent by SUB-GRANTEE strictly in accordance with the terms of this CONTRACT; and/or
- (C) Not be supported by adequate documentation to fully justify the expenditure.

8.4 Upon termination of this CONTRACT, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, HUD, or any other federal agency, SUB-GRANTEE shall refund such amount to CITY within ten (10) working days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this CONTRACT or from funds received from or through the federal government or CITY.

**8.5 In the event that the actual amount expended by SUB-GRANTEE to meet the level of performance specified in Attachment "I," or any amendment thereto, is less than that amount provided to SUB-GRANTEE pursuant to this CONTRACT, then CITY reserves the right to reappropriate or recapture any such underexpended funds.**

8.6 Utilizing the format provided by CITY, a "Contract Close-Out Package," together with a final expenditure report, for the period commencing on the date of SUB-GRANTEE's last invoice requesting reimbursement of funds pursuant to this CONTRACT, shall be submitted by SUB-GRANTEE to CITY within fifteen (15) working days following the expiration of the term of this CONTRACT.

8.7 Upon termination of this CONTRACT, all unclaimed (30 days or older) salaries or wages must be returned to CITY in the following format:

- (A) A cashier's check for the net aggregate amount payable to the "City of San Antonio"; and
- (B) A listing showing each person's social security number, full name, last known completed address, and amount owing.

## **IX. ALLOWABLE COSTS**

9.1 Costs shall be considered allowable only if approved in writing and incurred directly and specifically in the performance of and in compliance with this CONTRACT and with all city, state and federal laws, regulations and ordinances affecting SUB-GRANTEE's operations hereunder.

9.2 Approval of SUB-GRANTEE's budget as set forth in Attachment "II," however, shall not constitute prior written approval of the items included therein. For example, CITY's prior written authorization shall be required in order for the following to be considered allowable costs:

- (A) Encumbrance or expenditure during any one month period falling within the term of this CONTRACT which exceeds one-twelfth (1/12) of any budgeted line items for personnel costs as specified in Attachment "II";
- (B) CITY shall not be obligated to any third party sub-contracts of SUB-GRANTEE, nor shall CITY funds be used to pay for contract services extending beyond the expiration of this CONTRACT;
- (C) Out of town travel;
- (D) Costs or fees associated with the alteration or relocation of the facilities on and in which the activities specified in Attachment "I" are conducted;
- (E) Costs or fees associated with alterations, deletions or additions to the Personnel Schedule incorporated within Attachment "II";
- (F) Costs or fees for temporary employees or services;
- (G) Costs or fees for consultant and/or professional services; and
- (H) Costs or fees associated with attendance at meetings, seminars, or conferences.

9.3 Written requests for prior approval shall be SUB-GRANTEE's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Written approval by CITY must be obtained prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property. Procurements and/or purchases which must be approved pursuant to the terms of this CONTRACT shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

## **X.**

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## **XI. OWNERSHIP OF PROPERTY**

11.1 All equipment and/or non-recurring items necessary in connection with this Project shall be purchased or leased by CITY's Purchasing Department through CITY's Grants Monitoring and Administration Department. Furthermore, during the last four (4) months of this CONTRACT, purchases or leasing of expendable items, such as, but not limited to, office supplies, shall be made only upon the procurement of CITY's written consent where the cumulative cost for such items over said four-month period totals or exceeds the sum of \$200.00.

11.2 Ownership title to all capital acquisitions, supplies, materials or other property purchased with funds received pursuant to this CONTRACT and in accordance with the provisions hereof shall be vested in CITY, and possession thereof, upon termination of this CONTRACT, shall revert to CITY unless otherwise provided for by CITY in writing.

11.3 Upon delivery to SUB-GRANTEE of non-expendable property, written notification thereof shall be provided by SUB-GRANTEE to CITY within five (5) calendar days of the property's delivery so as to enable CITY to effect property identification and recording for inventory purposes. Regarding the property, SUB-GRANTEE shall at all times maintain adequate records thereon and control thereof; SUB-GRANTEE shall further perform annual physical inventories of the property in accordance with Attachment "VI" attached hereto and incorporated herein for all purposes.

11.4 SUB-GRANTEE shall be fully and solely responsible for safeguarding and maintaining all property referred to in this Article. Furthermore, SUB-GRANTEE shall be fully and solely responsible for reporting any and all lost, stolen, missing, damaged or destroyed property referred to in this Article. Inasmuch as funds provided to SUB-GRANTEE pursuant to this CONTRACT are funds which have been made available to CITY by the federal government, all such lost, stolen, missing, damaged or destroyed property shall be reported by SUB-GRANTEE to the local Police Department. SUB-GRANTEE shall make such reports immediately and shall deliver a copy of the official written police report to CITY's Office of Grants Monitoring and Administration office immediately. Prior to such delivery, SUB-GRANTEE shall ascertain that said report includes, at a minimum, the following:

- (A) An accurate and reasonably complete description of such property; and
- (B) An accurate and reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction of such property.

In the event a copy of the official written police report has not been made available to SUB-GRANTEE, a summary of said report shall be provided and delivered by SUB-GRANTEE to CITY's Grants Monitoring and Administration, including therein the date the report was made to the local Police Department and the name and badge number of the police officer who wrote such police report.

## **XII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

12.1 SUB-GRANTEE further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY are, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
- (B) Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and reflective of the financial condition of SUB-GRANTEE on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of SUB-GRANTEE;
- (C) No litigation or proceedings are presently pending or threatened against SUB-GRANTEE, and that SUB-GRANTEE has no information, or cause to believe, that litigation or proceedings, whether judicial or administrative, against SUB-GRANTEE is imminent;
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which SUB-GRANTEE is doing business or with the provisions of any existing indenture or agreement of SUB-GRANTEE;
- (E) SUB-GRANTEE has the legal authority to enter into this CONTRACT and accept payments hereunder, and has taken all necessary measures to authorize such execution of CONTRACT and acceptance of payments pursuant to the terms and conditions hereof; and
- (F) None of the assets of SUB-GRANTEE are, both currently and for the duration of this CONTRACT, subject to any lien or encumbrance of any character, except for current taxes not delinquent and except as shown in the financial statements provided by SUB-GRANTEE to CITY.

12.2 During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, SUB-GRANTEE covenants that it shall not, without the prior written consent of CITY's Office of Grants Monitoring and Administration's Grants Administrator or her designate:

- (A) Mortgage, pledge, or otherwise encumber or cause to be encumbered any of the assets of SUB-GRANTEE now owned or hereafter acquired by it;
- (B) Permit any pre-existing mortgages, liens, or other encumbrances to remain on or attached to any of the assets of SUB-GRANTEE which are allocated to the performance of this CONTRACT and with respect to which CITY has ownership hereunder;
- (C) Sell, assign, pledge, transfer or otherwise dispose of accounts receivable, notes or claims for money due or to become due;
- (D) Sell, convey, or lease all or any substantial part of its assets; or

- (E) Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity, or corporation.

12.3 Each of the foregoing representations, warranties, and covenants shall be continuing and deemed repeated each time SUB-GRANTEE submits a new request for payment in accordance with the terms, provisions and requirements of this CONTRACT.

### **XIII. MAINTENANCE OF RECORDS**

13.1 SUB-GRANTEE agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this CONTRACT. SUB-GRANTEE further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this CONTRACT and with all applicable federal and state regulations establishing standards for financial management; and
- (B) That SUB-GRANTEE's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

13.2 SUB-GRANTEE agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this CONTRACT.

13.3 SUB-GRANTEE agrees to include the substance of this Article in all of its sub-contracts.

13.4 Nothing in this Article shall be construed to relieve SUB-GRANTEE of:

- (A) Responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this CONTRACT; and
- (B) Fiscal accountability and liability pursuant to this CONTRACT and any applicable rules, regulations and laws.

### **XIV. ACCESSIBILITY OF RECORDS**

14.1 At any reasonable time and as often as CITY may deem necessary, SUB-GRANTEE shall make all of its records available to CITY, HUD, or any of their authorized representatives, and shall permit CITY, HUD, or any of their authorized representatives to audit, examine, and make excerpts and/or copies of same. SUB-GRANTEE's records shall include, but shall not be limited to, the following: payroll, personnel and employment records, contracts, and invoices.

### **XV. PERFORMANCE RECORDS AND REPORTS**

15.1 As often and in such form as CITY may require, SUB-GRANTEE shall furnish CITY such performance records and reports as deemed by CITY as pertinent to matters covered by this CONTRACT.

15.2 At minimum, monthly performance records and reports shall be submitted to CITY by SUB-GRANTEE no later than the tenth day of the following month. Records and reports shall be in accordance with the formats set forth in Attachment "IV" attached hereto and incorporated herein for all purposes.

15.3 As of the commencement date of this CONTRACT, SUB-GRANTEE agrees to gather information and data relative to all programmatic and financial reporting.

## **XVI. MONITORING AND EVALUATION**

16.1 CITY shall perform on-site monitoring of SUB-GRANTEE's performance pursuant to the terms of this CONTRACT.

16.2 SUB-GRANTEE agrees that CITY may carry out monitoring and evaluation activities so as to ensure SUB-GRANTEE's compliance with this CONTRACT, with the U.S. Housing Act of 1937, with the Work Statement and the Performance Goals, Objectives and Indicators set forth in Attachment "I", with the program assurances and certifications executed by CITY, and with all other laws, regulations and ordinances related to the performance hereof.

16.3 SUB-GRANTEE agrees to cooperate fully with CITY in the development, implementation, and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities.

16.4 SUB-GRANTEE agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its monitoring of SUB-GRANTEE's performance and that it will designate one of its staff to coordinate the monitoring process as requested by CITY staff.

16.5 After each official monitoring visit, CITY shall provide SUB-GRANTEE with a written report of monitoring findings.

16.6 Copies of any fiscal, management, or audit reports by any of SUB-GRANTEE's funding or regulatory bodies shall be submitted to CITY within five (5) working days of receipt thereof by SUB-GRANTEE.

## **XVII. INSURANCE**

17.1 SUB-GRANTEE agrees to comply with the following insurance provisions:

- A) Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Office of Grants Monitoring and Administration, which shall be clearly labeled "*Mayfield Garden Apartments, 737 W. Mayfield Boulevard, San Antonio, Texas 78211*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Office of Grants Monitoring and Administration. 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 Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- C) **A Grantee's financial integrity is of interest to the City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:**

<u>TYPE</u>	<u>AMOUNTS</u>
1. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>*b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Damage to property rented by you</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000.00

- D) Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Grantee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Office of Grants Monitoring and Administration  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- F) Grantee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- H) In addition to any other remedies the City may have upon Grantee'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 Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.
- I) Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.
- J) It is agreed that Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- L) Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

#### XIX. INDEMNIFICATION

**18.1 SUB-GRANTEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors 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 injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to SUB-GRANTEE's activities under this CONTRACT, including any acts or omissions of SUB-GRANTEE, any agent, officer, director, representative, employee, contractor or subcontractor of SUB-GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise or 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 THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNIFICATION 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. SUB-**

**GRANTEE shall promptly advise the CITY in writing of any claim or demand against the CITY or SUB-GRANTEE known to SUB-GRANTEE related to or arising out of SUB-GRANTEE's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at SUB-GRANTEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SUB-GRANTEE of any of its obligations under this paragraph.**

**18.2 It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this Article (Article XVIII), is an INDEMNITY extended by SUB-GRANTEE to INDEMNIFY, PROTECT, and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. SUB-GRANTEE 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 and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**18.3 It is expressly understood and agreed that SUB-GRANTEE is and shall be deemed to be an independent contractor and operator responsible to all parties for its acts or omissions and that CITY shall in no way be responsible therefor.**

#### **XIX. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

19.1 In the event that SUB-GRANTEE receives funding hereunder in excess of \$10,000.00, SUB-GRANTEE shall submit for CITY approval, within thirty (30) calendar days following execution of this CONTRACT, a written plan for compliance with federal equal employment opportunity and affirmative action rules, regulations and laws.

19.2 SUB-GRANTEE shall comply with all applicable local, state, and federal equal employment opportunity and affirmative action rules, regulations and laws.

19.3 So that CITY can investigate compliance with local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws, SUB-GRANTEE shall furnish to CITY any and all information and reports requested by CITY, and shall permit access by CITY of any and all of its books, records, and accounts.

19.4 In the event of non-compliance by SUB-GRANTEE (or SUB-GRANTEE's sub-contractors) with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, this CONTRACT may be canceled, terminated, or suspended by CITY, in whole or in part, and SUB-GRANTEE may be barred from further contracts with CITY.

#### **XX. NONDISCRIMINATION**

20.1 SUB-GRANTEE covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion,

national origin, handicap or familial status, in employment practices or in the use of or admission to the premises at, in or on which the Project described herein is to be performed, which said discrimination SUB-GRANTEE acknowledges is prohibited.

## **XXI. PERSONNEL POLICIES, PROCEDURES AND PRACTICES**

21.1 Personnel policies, procedures, and practices shall be established by SUB-GRANTEE and shall be available for examination. Such policies, procedures and practices, however, shall:

- (A) Be in writing, approved by the governing body of SUB-GRANTEE and submitted to CITY;
- (B) Be no more liberal than CITY's personnel policies, procedures, and practices including, but not limited to, those related to employment, salary and wage rates, working hours and holidays, fringe benefits, vacation and sick leave privileges, and travel; however a variance may be permitted upon SUB-GRANTEE's written request and CITY's approval and solely within the CITY's discretion which shall be decided on a case-by-case basis; and
- (C) Indicate that upon termination, for whatever reason, CITY shall not be liable nor responsible to SUB-GRANTEE for reimbursement of accrued annual leave and/or personal leave exceeding a total of two weeks [ten (10) working days] per employee. To this effect, SUB-GRANTEE shall inform its employees of this restriction and shall encourage employees to utilize leave benefits during the fiscal year for which the benefits are provided pursuant to the terms, provisions and requirements of this CONTRACT.

21.2 SUB-GRANTEE represents and warrants that it has complied with, and will continue to comply with, throughout the course of this solicitation and contract award process, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of Ordinance No. 2010-06-17-0531, passed and approved on June 17, 2010 (hereinafter referred to as "CITY's SBEDA Ordinance"). As part of such compliance, SUB-GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. SUB-GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The CITY's Relevant Marketplace is defined in the CITY's SBEDA Ordinance as the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies (disparity and availability study done by MGT of America). The San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson, determines eligibility for participation under various programs established by the CITY's SBEDA Ordinance. SUB-GRANTEE understands and agrees that a

material violation of this clause shall be considered a material breach of this CONTRACT and may result in termination of this CONTRACT, disqualification of SUB-GRANTEE from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. SUB-GRANTEE's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY, pursuant to the solicitation for this CONTRACT, is hereby attached, and incorporated into the material terms of this CONTRACT. SUB-GRANTEE shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to this CONTRACT.

## **XXII. CONFLICT OF INTEREST**

22.1 SUB-GRANTEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual 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 percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) 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.

22.2 Pursuant to the subsection above, SUB-GRANTEE 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. SUB-GRANTEE further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

## **XXIII. NEPOTISM**

23.1 SUB-GRANTEE shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by SUB-GRANTEE or who is a member of SUB-GRANTEE's governing body. The term "member of immediate family" shall include: wife, husband, son, daughter, mother, father, brother, sister, in-law, aunt, uncle, cousin, nephew, niece, step-parent, step-child, half-brother and half-sister.

## **XXIV. POLITICAL ACTIVITY**

24.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

## **XXV. SECTARIAN ACTIVITY**

25.1 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.

## **XXVI. DIRECTORS' MEETINGS**

26.1 During the term of this CONTRACT, SUB-GRANTEE shall cause to be delivered to CITY copies of all notices of meetings of its Board of Directors. Said copies of notices shall set forth the time and place of each meeting, shall be delivered to CITY in a timely manner so as to give CITY adequate notice thereof and shall include therein an agenda and a brief description of the matters to be discussed thereat.

26.2 SUB-GRANTEE understands and agrees that CITY representatives shall be afforded access to all of SUB-GRANTEE's Board of Directors' meetings.

26.3 Minutes of all meetings of SUB-GRANTEE's governing body shall be submitted to CITY within ten (10) working days of approval.

## **XXVII. PUBLICITY**

27.1 When appropriate, as determined by and upon written approval of CITY, SUB-GRANTEE shall publicize the activities conducted by SUB-GRANTEE pursuant to the terms of this CONTRACT. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for SUB-GRANTEE, however, mention shall be made that the Project was made possible with HUD funding and CITY participation.

## **XXVIII. PUBLICATIONS**

28.1 All published materials and written reports submitted pursuant to this CONTRACT shall be originally developed unless otherwise specifically provided for herein. If material not originally developed is included in a report, however, said material shall have its source identified, either in the body of the report or by footnote, regardless of whether the material is in a verbatim or extensive paraphrase format.

28.2 All published materials submitted pursuant to this Project shall include the following reference on the front cover or title page:

“This document was prepared in accordance with the City of San Antonio's Housing Development Grant Program, with funding received from the United States Department of Housing and Urban Development.”

## **XXIX. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

29.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any

proposal or contract, and any responses, inquiries, correspondence and related material submitted by SUB-GRANTEE, shall, upon receipt, become the property of CITY.

### **XXX. FUNDING APPLICATIONS**

30.1 SUB-GRANTEE agrees to notify CITY each time SUB-GRANTEE is preparing or submitting any application for funding. When so preparing or submitting such an application, the following procedures shall be adhered to by SUB-GRANTEE:

- (A) When the funding application is in the planning stages, a description of the funds being applied for and of the proposed use for the funds shall be submitted by SUB-GRANTEE to CITY;
- (B) Upon award or notice of award, whichever is sooner, SUB-GRANTEE shall notify CITY of the award or notice thereof, and of the effect, if any, of such funding on the funds and programs agreed to hereunder. Such notice shall be submitted by SUB-GRANTEE to CITY, in writing, within ten (10) working days of receipt of the award or notice thereof, together with copies of the applicable budget, personnel complement, program description, and contract; and
- (C) Except pursuant to prior written consent of CITY, SUB-GRANTEE shall not use, either directly or indirectly, resources provided hereunder to prepare applications for other federal or private funds, nor shall said resources be used, directly or indirectly, as contributions.

### **XXXI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

31.1 SUB-GRANTEE certifies, and the CITY relies thereon in execution of this CONTRACT, that neither SUB-GRANTEE 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.

31.2 "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).

31.3 SUB-GRANTEE shall provide immediate written notice to CITY, in accordance with Article XLV, if, at any time during the term of this CONTRACT, including any renewals hereof, SUB-GRANTEE learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

31.4 SUB-GRANTEE's certification is a material representation of fact upon which the CITY has relied in entering into this CONTRACT. Should CITY determine, at any time during this CONTRACT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this CONTRACT in accordance with Article XXXV relating to termination of the CONTRACT.

## **XXXII. SUB-CONTRACTING**

32.1 Any other clause of this CONTRACT to the contrary notwithstanding, none of the work or services covered by this CONTRACT shall be sub-contracted without the prior written approval of CITY. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by sub-contractors with this CONTRACT shall be the responsibility of SUB-GRANTEE.

32.2 SUB-GRANTEE agrees that no sub-contract approved pursuant to this CONTRACT shall provide for payment on a "cost plus a percentage of cost" basis.

32.3 Despite CITY approval of a sub-contract, CITY shall in no event be obligated to any third party, including any sub-contractor of SUB-GRANTEE, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of CONTRACT execution or extending beyond the date of CONTRACT expiration.

## **XXXIII. CHANGES AND AMENDMENTS**

33.1 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 SUB-GRANTEE.

33.2 Whenever and as often as deemed necessary by CITY, CITY may request and require changes to SUB-GRANTEE's Work Statement (Attachment "I"). Such changes as requested or required by CITY, however, must be by written amendment hereto and may incorporate therein increases or decreases in the total monetary obligation of CITY to SUB-GRANTEE as provided for pursuant to the terms, provisions and conditions of this CONTRACT.

33.3 Except pursuant to (a) prior submission by SUB-GRANTEE of detailed information regarding budget and Project revisions, and (b) prior written approval thereof by CITY, SUB-GRANTEE shall neither make transfers between or among line items approved within the budget categories set forth in the Budget Summary incorporated within Attachment "II," nor shall SUB-GRANTEE alter, add to or delete from the Budget Detail likewise incorporated within said Attachment "II." Instead, SUB-GRANTEE shall request budget revisions in writing and in a form prescribed by CITY; such request for revisions, however, shall not increase the total monetary obligation of CITY as provided for pursuant to this CONTRACT, nor shall said revisions significantly change the nature, intent, or scope of the Project funded hereunder.

33.4 In the event that the level of funding for SUB-GRANTEE or for the Project described herein is altered, SUB-GRANTEE shall submit, immediately upon request by CITY, revised budget and Project information so as to enable re-evaluation by CITY of the original funding levels set forth in Attachment "II."

33.5 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this CONTRACT and

that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

33.6 SUB-GRANTEE agrees to notify CITY in writing of any proposed change in physical location for work to be performed pursuant to the terms of this CONTRACT. Such notice shall be provided by SUB-GRANTEE to CITY at least thirty (30) calendar days in advance of the proposed change.

33.7 SUB-GRANTEE further agrees to notify CITY of any changes in personnel or governing board composition, such notice to be provided within five (5) working days of the change.

#### **XXXIV. SUSPENSION OF FUNDING**

34.1 Upon determination by CITY of SUB-GRANTEE's failure to timely and properly perform pursuant to the provisions of this CONTRACT, CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion and upon five (5) working days written notice to SUB-GRANTEE, withhold further payments to said SUB-GRANTEE. CITY's notice shall specifically set forth SUB-GRANTEE's alleged default or failure as well as the action required for cure thereof.

34.2 The period of funding suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. Upon expiration of the suspension period:

- (A) Should CITY determine that the default or deficiency has been cured, SUB-GRANTEE may be restored to full compliance status and paid all eligible funds withheld during the suspension period; or
- (B) Should CITY determine continued non-compliance, the provisions of Article XXXV hereunder may be effectuated.

#### **XXXV. TERMINATION**

35.1 "Termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.

35.2 CITY may terminate this CONTRACT for any of the following reasons:

- (A) Neglect or failure by SUB-GRANTEE to perform or observe any of the terms, conditions, covenants or guarantees of this CONTRACT or of any written contract or amendment between CITY and SUB-GRANTEE;
- (B) Termination or reduction of funding of the Project by HUD;
- (C) Failure by SUB-GRANTEE to cure, within the period prescribed pursuant to the above Article XXXIV of this CONTRACT, any default or deficiency basis for suspension of funding hereunder;

- (D) Finding by CITY that SUB-GRANTEE:
- (1) is in such unsatisfactory financial condition as to endanger performance under this CONTRACT, including, but not limited to:
    - (a) The apparent inability of SUB-GRANTEE to meet its financial obligations;
    - (b) The appearance of items that reflect detrimentally on the creditworthiness of SUB-GRANTEE, including, but not limited to, liens, encumbrances, etc., on the assets of SUB-GRANTEE.
  - (2) has allocated inventory to this CONTRACT substantially exceeding reasonable requirements; or
  - (3) is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this CONTRACT;
- (E) Appointment of a trustee, receiver or liquidator for all or a substantial part of SUB-GRANTEE's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against SUB-GRANTEE;
- (F) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of SUB-GRANTEE's creditors;
- (G) Inability by SUB-GRANTEE to conform to changes in local, state and federal rules, regulations and laws as provided for in Article III and in paragraph number 33.5 of this CONTRACT; and
- (H) Violation by SUB-GRANTEE of any rule, regulation or law to which SUB-GRANTEE is bound or shall be bound under the terms of this CONTRACT.

35.3 CITY may terminate this CONTRACT for convenience at any time after which SUB-GRANTEE shall be paid an amount not to exceed the total accrued expenditures as of the effective date of termination. In no event, however, will compensation to SUB-GRANTEE exceed an amount which bears the same ratio to the total compensation as the services actually performed by SUB-GRANTEE bears to the total services required of SUB-GRANTEE, less payments previously made.

35.4 SUB-GRANTEE may terminate this CONTRACT for any of the following reasons:

- (A) Cessation of outside funding upon which SUB-GRANTEE depends for performance hereunder; SUB-GRANTEE may opt, however, within the limitations of this CONTRACT and with the written approval of CITY, to seek an alternative funding source, provided that the termination of funding by the initial outside source was not occasioned by a breach of agreement as defined herein or as defined in a contract between SUB-GRANTEE and the funding source in question; or

(B) Upon the dissolution of the SUB-GRANTEE organization, provided such dissolution was not occasioned by a breach of this CONTRACT.

35.5 Upon a decision to terminate by either CITY or SUB-GRANTEE, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

35.6 Upon receipt of notice to terminate, SUB-GRANTEE shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this CONTRACT. To this effect, CITY shall not be liable to SUB-GRANTEE or SUB-GRANTEE's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

35.7 Upon receipt of notice to terminate, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of SUB-GRANTEE under this CONTRACT shall, at the option of CITY, and in accordance with Article XXX hereof, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by SUB-GRANTEE to CITY in a timely and expeditious manner.

35.8 Within thirty (30) days after receipt of notice to terminate, SUB-GRANTEE shall submit a statement to CITY, indicating in detail the services performed under this CONTRACT prior to the effective date of termination.

35.9 Any termination of this CONTRACT as herein provided shall not relieve SUB-GRANTEE from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against SUB-GRANTEE hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from SUB-GRANTEE. Instead, all rights, options, and remedies of CITY contained in this CONTRACT shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this CONTRACT.

35.10 Should this CONTRACT be terminated by either party hereto for any reason, including termination under Section 35.3 of this CONTRACT, if the work required hereunder of SUB-GRANTEE is not fully completed to the satisfaction of CITY in accordance with the terms of this CONTRACT, SUB-GRANTEE shall refund any and all sums of money paid by CITY to SUB-GRANTEE within ten (10) working days of CITY's written request therefor.

35.11 Upon termination of this CONTRACT by CITY under paragraph number 35.2(A), SUB-GRANTEE shall be barred from future CONTRACTS with CITY absent the express written consent of the City Manager of CITY, or the City Manager's designate.

## **XXXVI. NOTIFICATION OF ACTION BROUGHT**

36.1 In the event that any claim, demand, suit, proceeding, cause of action, or other action (hereinafter collectively referred to as "claim") is made or brought against SUB-GRANTEE, SUB-GRANTEE shall give written notice thereof to CITY within two (2) working days after itself being notified. SUB-GRANTEE's notice to CITY shall state the date and hour of notification to SUB-GRANTEE of the claim, the names and addresses of those instituting or threatening to institute the claim, the basis of the claim, and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XLV of this CONTRACT.

### **XXXVII. ASSIGNMENTS**

37.1 SUB-GRANTEE shall not transfer, pledge, or otherwise assign this CONTRACT, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt at transfer, pledge, or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

### **XXXVIII LEGAL EXPENSES**

38.1 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.

38.2 During the term of this CONTRACT, if SUB-GRANTEE 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 SUB-GRANTEE is in violation of paragraph 38.1.

38.3 SUB-GRANTEE, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the CITY remains unresolved.

38.4 For purposes of this Article, "adversarial proceeding" includes any cause of action filed by the SUB-GRANTEE in a state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

### **XIX. SEVERABILITY OF PROVISIONS**

39.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal, or unenforceable, there be added as a part of the CONTRACT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XL. RENEWAL NOT AUTOMATIC**

40.1 Funding under this CONTRACT and any amendments or waivers that may be made or granted hereunder shall not be automatically renewed on the anniversary date of this CONTRACT. To the contrary, funding of any project requiring contract execution shall be achieved only pursuant to approval of the City Council of the City of San Antonio.

#### **XLII. NON-WAIVER OF PERFORMANCE**

41.1 No waiver by CITY of a breach of any of the terms, conditions, covenants, or guarantees of this CONTRACT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this CONTRACT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this CONTRACT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

41.2 No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

41.3 No representative or agent of CITY may waive the effect of the provisions of this Article.

#### **XLII. SPECIAL CONDITIONS**

42.1 SUB-GRANTEE acknowledges, understands, and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended:

- (A) The work to be performed under this CONTRACT is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(1)(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.
- (B) The parties to this CONTRACT agree to comply with HUD's regulations in 24 C.F.R. 135, which implement Section 3. As evidenced by their execution of this CONTRACT, the parties to this CONTRACT certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

- (C) SUB-GRANTEE agrees to send to each labor organization or representative of workers with which the contract has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of SUB-GRANTEE's commitments under the Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (D) SUB-GRANTEE agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in the Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. 135. SUB-GRANTEE will not subcontract with any subcontractor where SUB-GRANTEE has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135.
- (E) SUB-GRANTEE will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. 135.
- (F) Noncompliance with HUD's regulations in 24 C.F.R. 135 may result in sanctions, termination of this CONTRACT for default, and debarment or suspension from further HUD-assisted contracts.
- (G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.C. 450e) also applies to the work to be performed under this CONTRACT. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this CONTRACT that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

**XLIII. ENTIRE CONTRACT**

43.1 This CONTRACT constitutes the final and entire agreement between the parties hereto and contains all of the (including all attachments hereto) terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

#### **XLIV. INTERPRETATION**

44.1 In the event 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 to HUD for matters of compliance, shall have the final authority to render or secure an interpretation.

#### **XLV. NOTICES**

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

CITY:

Office of Grants Monitoring and Administration  
1400 S. Flores, Unit 3  
San Antonio, Texas 78204  
Attn: Grants Administrator

SUB-GRANTEE:

LIFSHUTZ COMPANY  
737 W. Mayfield Boulevard  
San Antonio, Texas 78211  
Attn: President

Notice 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 such change.

#### **XLVI. PARTIES BOUND**

46.1 This CONTRACT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

#### **XLVII. GENDER**

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

**XLVIII. RELATIONSHIP OF PARTIES**

48.1 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 venturers or any other similar such relationship between the parties hereto.

**XLIX. TEXAS LAW TO APPLY**

49.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. VENUE AN JURISDICTION ARISING UNDER OR IN CONNECTION WITH THIS CONTRACT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

**L. CAPTIONS**

50.1 The captions contained in this CONTRACT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this CONTRACT.

**EXECUTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**CITY OF SAN ANTONIO,**  
a Texas municipal corporation

**LIFSHUTZ COMPANY**

BY: \_\_\_\_\_  
TADD WILLE  
Interim Grants Administrator  
Office of Grants Monitoring  
and Administration

BY: \_\_\_\_\_  
GUADALUPE SANCHEZ LOPEZ  
President

**APPROVED AS TO FORM:**

\_\_\_\_\_  
DENISE MONDAY  
Assistant City Attorney

**Attachments:**

- Attachment "I" – Work Statement
- Attachment "II" – Project Budget
- Attachment "III" – Federal Compliance Manual
- Attachment "IV" – Performance Records/Reports

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- Attachment "V" – Billing Package
- Attachment "VI" – Non-Expendable Property Report