VZ
11/19/15
Item No. 26B

AN ORDINANCE 2015-11-19-0977

APPROVING A FUNDING AGREEMENT IN THE AMOUNT OF $500,000.00 WITH THE WESTSIDE DEVELOPMENT CORPORATION REPRESENTING THE CITY'S CONTRIBUTION TOWARDS THE FUNDING AND CONSTRUCTION OF CAPITAL IMPROVEMENTS TO THE WESTSIDE EDUCATION AND TRAINING CENTER.

* * * * *

WHEREAS, the Westside Education & Training Center (WETC) was created in 2006 out of a partnership between the City of San Antonio, Alamo Community College District (ACCD), and Edgewood Independent School District (EISD), collectively referred to as the Partners, to provide a means for residents to attain entry-level occupational skills or to increase technical skills; and

WHEREAS, the WETC is operated by ACCD at the former Lincoln Elementary School through a no-cost lease with EISD and has provided workforce training, and occupational and academic instruction to over 12,000 students since its inception; and

WHEREAS, the buildings at the WETC campus require mechanical systems upgrades, including the installation of an elevator, to allow for the full use of existing space, which upgrades are estimated to cost $887,823.00; and

WHEREAS, a $300,000.00 grant from the State of Texas and $500,000.00 in unissued City Certificates of Obligation have been identified as sources of partial funding for these improvements, and ACCD has committed to pay for the remaining costs of $87,823.00 and any excess expenses; and

WHEREAS, the proposed Funding Agreement with the Westside Development Corporation (WDC) in the amount of $500,000.00 represents the City's contribution toward the upgrades to the WETC and is contemplated in a Memorandum of Understanding which has previously been approved by governing boards of the Partners and the WDC, and which Funding Agreement staff now recommends for approval by the City Council; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Funding Agreement with the WDC in the amount of $500,000.00 are hereby approved. The City Manager, or her designee, is authorized to execute the Agreement, a copy of which, in substantially final form, is set out in Exhibit I.

SECTION 2. The City's contribution of $500,000.00 for the proposed Funding Agreement will be funded by Certificates of Obligation, previously authorized in the FY 2015 budget. Funds are available in the Westside Education & Training Center Capital Improvement Project; 19-00017-05-02; GL 5201140 $500,000.00.

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SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 19th day of November, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**26B (in consent vote: 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26A, 26B)**
Date:	11/19/2015
Time:	09:11:03 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Funding Agreement in the amount of $500,000.00 with the Westside Development Corporation representing the City's contribution towards the funding and construction of capital improvements to the Westside Education and Training Center.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Agenda Item:	**26B (in consent vote: 26A, 26B)**
Date:	11/19/2015
Time:	02:42:51 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Funding Agreement in the amount of $500,000.00 with the Westside Development Corporation representing the City's contribution towards the funding and construction of capital improvements to the Westside Education and Training Center.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7				x		
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				x

Exhibit I

STATE OF TEXAS §
§ **FUNDING AGREEMENT**
COUNTY OF BEXAR §

This Funding Agreement (the "Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ and Westside Development Corporation, a Texas non-profit corporation (hereinafter referred to as "WDC" or "Grantee"), acting by and through its officers, hereto duly authorized.

WHEREAS, Tier 1 capital improvements to the Westside Education & Training Centers are estimated to cost $887,823.00, and the State of Texas has committed to allocating $300,000.00 in grant funds which shall be used to pay a portion of Tier 1 Improvements; and

WHEREAS, Alamo Community College District (ACCD) has committed to paying $87,823.00 and excess expenses, if applicable, associated with Tier 1 Improvements; and

WHEREAS, City Council has approved the allocation of $500,000.00 in Unissued Certificate of Obligation in FY2015 Budget to be used towards the City's contribution to Tier I capital improvements of the Westside Education & Training Center (WETC), an Alamo Colleges Workforce Specialty Center; and

WHEREAS, Grantee proposes the application of these funds to address specific mechanical system upgrades, including the installation of an elevator, to allow for the full use of existing space at the site, and ADA access to second floor of building; and

WHEREAS, ACCD is the fee simple owner of the property located at 563 SW 40th Street, San Antonio, Texas 78237 ("Real Property"), the proposed location of the Project, in Council District 6; and

WHEREAS, the public benefit to be gained from the Project is the provision of continued workforce development, operated under non-profit regulations, available for the citizens of San Antonio; and

NOW THEREFORE, the Parties hereto (the "Parties") severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The Term

shall expire upon the earlier to occur of: (a) final payment by the City of all funding under this Agreement, or (b) termination of this Agreement as otherwise provided herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in Section V of this Agreement, and subject to the other terms and conditions of this Agreement, including, but not limited to, force majeure provisions, Grantee hereby accepts full responsibility for the performance of all services and activities to complete construction of Tier I improvements of the Westside Education & Training Center Project by April 30, 2018, as described in this Agreement.

2.02 The current budget estimates of the Project are approximately $887,823.00. Grantee shall provide all necessary funding for the Project beyond the City's commitment of $490,000.00, plus $10,000.00 which shall be retained by the City per Section 5.01, for a total of $500,000.00. Grantee shall provide evidence to City that all Project funds have been secured prior to the receipt of any funding under this Funding Agreement. In the event that the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any costs over the estimated amount of the Project unless agreed to in writing in the form of an amendment to this Funding Agreement.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Chief Executive Officer/President shall be Grantee's designated representative responsible for the management and the point of contact for City on all matters regarding this Funding Agreement.

2.04 The Director of Center City Development & Operations (CCDO) or designee shall be responsible for the administration of this Agreement on behalf of the City until the completion of the City funded portion of the Project.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.03 and 2.04 hereinabove.

2.06 Grantee shall provide to City their plans and specifications for the Project, including a construction schedule, ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. After approval by City, the Plans shall be attached and incorporated into this Funding Agreement as Exhibit A and Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions and the State of Texas Commission on Environmental Quality (Article 9102). Nor does City's approval of the Plans release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in

the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.07 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans and to request copies of construction inspections performed by Grantee and third parties. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the Director of TCI or designee at the completion of the Project construction. Grantee shall notify City and City shall have the right to attend all scheduled construction meetings. Grantee shall provide City with a copy of the Certificate of Occupancy upon completion of the Project.

2.08 Beginning on January 31, 2017, and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall provide Director of CCDO or designee an annual report ("Annual Report"). The Annual Report shall include the following:

2.08.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.

2.08.2 Evidence of insurance coverage, with City as additional insured, as outlined in Section 12 below.

2.08.3 Description of all maintenance activities, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it shall comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee's use of City Funds and shall use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 Grantee agrees to procure all contracts under this agreement through open competitive contracting processes which are advertised to the public in an appropriate manner.

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS

3.04 (A) The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the City funded portion of this agreement. Grantee agrees that its construction contractor performing work on the City funded portion of the Project shall comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

(B) In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City shall provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the Project, Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee shall require its construction contractor to collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City shall audit certified payroll records as deemed necessary by City to confirm compliance with this Agreement.

(C) Upon audit of the records and certified payrolls under this section, should the City or its auditors find any wage violations, the Grantee shall cause its construction contractor to forfeit as a penalty to the City $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Grantee's contractor from its obligations under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

ENVIRONMENTAL

3.05 Construction shall be in accordance with the all applicable state and federal environmental requirements including all City applicable construction and development regulations.

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

3.06 SBEDA (SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM): The City of San Antonio, through City Ordinance No. 2010-06-17-0531, has adopted and implemented a Small Business Economic

Development Advocacy ("SBEDA") Program. Information regarding the SBEDA Ordinance may be found on the City's Economic Development Department (EDD) website and is also available in hard copy form upon request to the City. In accordance with the SBEDA Program, any contract entered into as a result of this solicitation shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. Grantee's proposal shall be submitted to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative, relative goal and required date for return of a Utilization Plan. Should the Grantee's selected contractor be unable or unwilling to contractually commit to meet the goals set by the Goal Setting Committee, the City shall decline the Grantee's proposal and may negotiate with the next favorable contractor. Grantee shall comply with all Small/Minority and Woman Owned Business Terms and Conditions as attached hereto as **Exhibit B.**

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees that the programs and use described herein will continue for the Term of this Funding Agreement.

4.02 Grantee shall be responsible for the operation and maintenance of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The Project improvements shall facilitate the construction of capital improvements to the Westside Education and Training Center during the entire term of the Bonds issued in connection with the Project.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of $490,000.00, and such funding is contingent on Grantee providing satisfactory evidence of the prior successful completion of all of the following:

a. Execution of a Memorandum of Understanding (the "MOU") outlining the roles and responsibilities of WDC, EISD, ACCD, WETC Advisory Board and CITY, as recommended in the strategic plan, that has received authorization and approval from each of their governing bodies;

b. Updated Bylaws of the WETC Advisory Board and demonstrated compliance with the outlined responsibilities;
c. Renewal and execution of a no-cost lease for the Project site for a minimum 10-year term for the existing purposes, level of maintenance and services by EISD;
d. An approved and executed agreement to provide educational support including staff, services and grants to assist with operations of the Project facility for a minimum 10-year term by ACCD;
e. Development of a business plan by WDC for the self-sustainability of WETC, that will be adopted and approved by the WETC Advisory Board and the governing bodies of ACCD, WDC, and EISD, to include a funding strategy developed in cooperation with EISD and ACCD for either the acquisition of the property or a long-term lease that includes the identified $7.7 million in capital improvements;
f. Development of a prioritized list of work and procurement of contractor bids by WDC to be completed for the Project capital improvements, approved by the governing bodies of the parties to the MOU; and
g. Identification of additional funding and application for grants by WDC to complete the capital improvements identified in the strategic plan as "Tier 1 Priorities" for the Project that exceed the $500,000.00 in funding to be provided by CITY from eligible and approved funds.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee and CCDO, for payment of any monies or provision of any goods or services.

5.03 Funding shall consist of reimbursements paid to Grantee for construction cost of the Project, not to exceed $490,000.00, with $10,000.00 to be retained by the City, for total funding by City of $500,000.00. The City funding provided under this Funding Amendment may only be used for the portions of the Project which are dedicated to public use/public purpose. No City funds may be used for Grantee's personal office space or other non-public aspects of the Project

5.04 Except as otherwise set forth herein, it is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Grantee agrees to maintain readily identifiable records that shall provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

(A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

(B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

6.03 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIME*link*) within thirty (30) days after receipt of an approved invoice.

6.04 All requests for reimbursement shall be submitted through the COSA PRIME*link*. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIME*link* sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIME*link* and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the portal.

6.05 Prior to reimbursement, City shall have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.06 City agrees to provide Grantee written notice regarding any expenditure for which Grantee has requested reimbursement under this Agreement which the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice shall provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

(A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or

(B) Not be supported by adequate documentation to fully justify the expenditure.

6.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in this Section VI as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request wherein the amount disallowed or disapproved shall be specified.

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all applicable city, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. All funds paid by City shall be for permanent public improvements. Only the following categories of costs shall be considered allowable:

- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design Contract and Amendments

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with the terms of this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or an affiliated organization of Grantee
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project (including but not limited to costs and fees of the Architect)
- Costs or fees associated with attendance of Grantee at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation of Grantee
- Fundraising
- Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's general contractor and shown on the approved Plans and specifically approved by City.
- Advertising

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

(A) All information, data or report heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects 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) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.

(C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

IX. ACCESSIBILITY OF RECORDS

9.01 At any time during normal business hours and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 Grantee agrees and represents that it shall cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

X. MONITORING AND EVALUATION

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and to ensure

Grantee's compliance with all applicable laws, regulations and ordinances related to the performance hereof.

XI. INDEMNITY

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

11.02 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Grantee shall advise the City in writing within 24 hours of any claim or demand against the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Grantee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this paragraph.

11.03 **NOTWITHSTANDING THE FOREGOING, TO THE EXTENT PROVIDED BY LAW, CITY SHALL BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST CITY ARISING IN FAVOR OF ANY PERSON, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY, OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF CITY AND/OR ITS EMPLOYEES.**

XII. INSURANCE & BONDS

12.01 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 Transportation & Capital Improvements (TCI) Department, which shall be clearly labeled " WESTSIDE EDUCATION & TRAINING CENTER of Greater San Antonio" 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 shall 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 TCI Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 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 shall City allow modification whereby City may incur increased risk.

12.03 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

liability. *g. Explosion, Collapse, Underground h. Damage to property rented by Grantee	h. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Builder's Risk (if applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Property Insurance: For physical damage to the property of City, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of the Contractor's property
*if applicable	

12.04 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. Grantee 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.

12.05 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: TCI Department
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

12.06 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 shall 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.

12.07 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.

12.08 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.

12.09 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.

12.10 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.

12.11 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..

12.12 Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

12.13 Grantee shall ensure that its general contractor complies with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. NONDISCRIMINATION

13.01 As a party to this contract, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIV. CONFLICT OF INTEREST

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

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

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

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

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

XV. POLITICAL ACTIVITY

15.01 None of the activities performed 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.

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

16.01 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 Grantee, shall, upon receipt, become the property of City (provided that the Grantee shall be entitled to maintain copies of all of the foregoing materials).

XVII. CONTRACTING

17.01 Any work or services contracted hereunder shall be 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 Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XVIII. CHANGES AND AMENDMENTS

18.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

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

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City, which approval shall not be unreasonably withheld or delayed

after construction of the Project is completed. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of 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 Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement 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 either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, 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 Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

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

21.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

XXII. ENTIRE AGREEMENT

22.01 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement 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.

XXIII. NOTICES

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

City: Director, Center City Development & Operations Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

And

Grantee: President/CEO
Westside Development Corporation
2300 W. Commerce Street, Suite 207
San Antonio, Texas 78207

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXIV. PARTIES BOUND

24.01 This Agreement 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.

XXV. RELATIONSHIP OF PARTIES

25.01 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.

XXVI. TEXAS LAW TO APPLY

26.01 This Agreement 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.

XXVII. GENDER

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

XVIII. CAPTIONS

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

XXIX. DEFAULT

29.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same, and Grantee shall have thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

29.02 In no event shall this Agreement or City's use of the Leased Premises be terminated prior to the final payment or defeasement of the bonds issued by City to pay for the improvements. As long as such bonds have not been paid, the City's failure to perform any required actions under this Agreement shall give rise to Grantee's right, upon 60 days written notice to City, to undertake to perform any such actions and to receive reimbursement from City for the cost of performing such actions. After the bonds have been finally paid, any breach or violation by City to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of Grantee, at its option, upon thirty (30) days' written notice to City, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

XXX. LEGAL AUTHORITY

30.01 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 Agreement and to perform the responsibilities herein required.

30.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

XXXI. FORCE MAJEURE

31.01 If City or Grantee is delayed or prevented from performing any of their respective obligations under this Agreement by reason of strike, labor troubles, or any cause whatsoever beyond such party's reasonable control, the period of such delay or prevention shall be deemed added to the time herein provided for the performance of any such obligation by the delayed party.

XXXII. CONDITIONS TO AGREEMENT

32.01 This Agreement, and all obligations of the parties hereunder, is expressly made conditioned on the mutual final agreement to the terms and conditions of this Funding Agreement.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 2015.

CITY OF SAN ANTONIO

By: _____
Lori Houston, Assistant City Manger
Director, Center City Development & Operations

WESTSIDE DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Leonard Rodriquez, President & CEO

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibit A

PLANS

Exhibit B

SBEDA

(Exhibit B to be replaced after Affirmative Procurement Initiatives (API) have been set by City's Goal Setting Committee)

For the purposes of this Exhibit, CITY OF SAN ANTONIO shall be referred to as "CITY" and Westside Community Development of San Antonio shall be referred to as "GRANTEE."

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Contract Requirements and Commitment

GRANTEE understands and agrees that the following provisions shall be requirements of this Agreement, and by its execution, GRANTEE commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of GRANTEE to commit, through fully-documented and signed SBO-promulgated Commitment and Subcontractor/Supplier Utilization Plan forms, to satisfying the application of the SBE Prime Contracting Points to its evaluation criteria for solicitation or bid documents shall constitute default.

GRANTEE understands and agrees that GRANTEE is required to insert the provisions of this Article (*SBEDA Ordinance Compliance Provisions*, Sections A through H) into the solicitation and contract documents for its Prime Contractors. GRANTEE understands and agrees that GRANTEE is required to, and responsible for, Prime Contractor and Subcontractor compliance with all provisions of the SBEDA Ordinance and this

Agreement including, but not limited to, obtaining all Utilization Documentation from GRANTEE's Prime Contractors and securing Prime GRANTEE and Subcontractor registration in City's CVR.

GRANTEE understands and agrees that the following provisions shall be requirements of this Agreement, and by submitting this executed Agreement, GRANTEE commits to comply with these requirements.

Exception Request - GRANTEE'S Prime Contractor and Subcontractor associated with the scope of work included in this Agreement may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form *(available at http://www.sanantonio.gov/SBO/Forms.aspx)* with its solicitation response to the GRANTEE. The Prime Contractor's Exception request must fully document why: (1) the value of the contract is below the $50,000.00 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Grantees, Prime Contractors and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of

Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of San Antonio's S/M/WBE Program. This form shall be submitted, to the City's certifying agency, every two years by each certified vendor by the anniversary date of its original Certification.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by GRANTEE to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if GRANTEE attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a Commercially Useful Function is not actually performed by the S/M/WBE firm, the GRANTEE shall not be given credit for the participation of its S/M/WBE Subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the GRANTEE and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm that is no more than five years old at the time of its original certification as an Emerging M/WBE that is actively enrolled in the M/WBE or SBE Mentor-Protégé Program for its industry (once established by the City), whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the Small Business Office Manager or designee, and the Director of Purchasing & General Services (P&GS) or Director of Transportation & Capital Improvements Department (TCI) or their designees, and the Director or designee of the Originating Department (if the Originating Department is neither P&GS nor TCI,) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the GRANTEE's or Grantee's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) Utilization Documentation within a solicitation response or contract reflecting the Grantee's or GRANTEE'S commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting

of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Grantee or GRANTEE; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of GRANTEE's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

Graduation – an SBE firm permanently graduates from the City of San Antonio SBE program when it meets the criteria for graduation set forth in Section III.E.7 of this Ordinance. A firm's graduation or temporary suspension from the SBE program does not necessarily affect its eligibility to be certified and to participate in the City's S/M/WBE Program as an M/WBE. An M/WBE firm permanently graduates from the M/WBE program when it meets the criteria for graduation as set forth in this Ordinance in Section III.E.7 An M/WBE firm that graduates from the M/WBE program is no longer eligible to participate in the Race-Conscious APIs as described herein at Sections III D.2, D.4, D.6, D.8 & D.10 and is also ineligible to participate in the SBE program APIs at Sections III D.1, D.3, D.5, D.7 & D.9 of this Ordinance. However, a graduated M/WBE firm may continue to participate in and benefit from other Race-Neutral non-industry-specific remedies of the S/M/WBE Program as described in Section III.C of this Ordinance.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999)]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories".

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to GRANTEE, Prime Contractors and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the GRANTEE for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of "Race-Conscious").

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of "Race-Neutral").

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Grantee – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, GRANTEE is the Grantee.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the GRANTEE and its Subcontractors shall be submitted to the CITY prior to execution of this Agreement and any modification of this Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of GRANTEE's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Utilization Documentation – the Commitment Form and subsequent Subcontractor/Supplier Utilization Plan is a binding part of this Agreement and which states the GRANTEE's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Agreement, and states the name, scope of work, and dollar value of work to be performed by each of GRANTEE's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture Partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals

that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As GRANTEE acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at Economic Inclusion and, moreover, that such terms are part of GRANTEE's scope of work as referenced in this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. GRANTEE voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this Agreement by the CITY. Without limitation, GRANTEE further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. GRANTEE shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding GRANTEE's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions to fulfill the scope of work for this Agreement including, but not limited to, the timely submission of completed forms and/or Utilization Documentation or any other required documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. GRANTEE shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of GRANTEE or its Subcontractors or suppliers;

3. GRANTEE shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, Agreement-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. GRANTEE shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to GRANTEE's Subcontractor / Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by GRANTEE to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by GRANTEE of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. GRANTEE shall immediately notify the Originating Department and SBO of any transfer or assignment of its Agreement with the CITY, as well as any transfer or change in its ownership or business structure.

6. GRANTEE shall retain all records of its Subcontractor payments for this Agreement for a minimum of four years, or as required by state law, following the conclusion of this Agreement or, in the event of litigation concerning this Agreement, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a GRANTEE's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or Joint Venture Partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the GRANTEE and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. GRANTEE acknowledges that the CITY will not execute a Agreement or issue a Notice to Proceed for this project

until the GRANTEE and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and GRANTEE has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this Agreement.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. GRANTEE agrees to subcontract at least **TBD (xx%)** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that GRANTEE submitted to the CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement, **and**

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. GRANTEE agrees to subcontract at least **TBD (xx%)** of its prime contract value to certified S/M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that GRANTEE submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each S/M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the

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underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. GRANTEE agrees to subcontract at least **TBD** (xx%) of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This one percent (XX%) subcontracting goal will also count toward the aforementioned nineteen percent (XX%) M/WBE subcontracting goal.

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. GRANTEE agrees to subcontract at least TBD **(XX%)** of the contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

The Subcontractor / Supplier Utilization Plan that GRANTEE submitted to CITY for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 40% that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of June 2015, African-American owned firms represent approximately 2.82% of available subcontractors, Hispanic-American firms represent approximately 16.19%, Asian-American firms represent approximately 1.22%, Native

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American firms represent approximately 0.19%, and Women-owned firms represent approximately 5.05% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the GRANTEE represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, 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. The company 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 company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company 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. 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 incorporated into the material terms of this Agreement. GRANTEE shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this Agreement by GRANTEE, GRANTEE shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the GRANTEE's reported subcontract participation is accurate. GRANTEE shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of GRANTEE's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to GRANTEE, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

H. Violations, Sanctions and Penalties

In addition to the above terms, GRANTEE acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of this Agreement;

2. Withholding of funds;

3. Rescission of this Agreement based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of GRANTEE or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).